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NOTES OF RECENT CASES.

Ramachandra Iyer, J. Veerappa Naidu *v.* Gopalan.
27th October, 1960. C.R.P. No. 905 of 1960.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *sections* 2 (1) *and* 7 (3) (*c*)—" *Building* "—*Meaning of.*

The definition of the word ' building in section 2 (1) of the Madras Buildings (Lease and Rent Control) Act, 1949, should be read subject to the qualifications expressed therein, *viz.*, ' unless there is anything in the subject or context '. For purpose of section 7 (3) (*c*) of the Act a part of a building in occupation of a landlord will not be a building as defined by the Act, though the part in the occupation of the tenant will be one. A part of a building will be deemed to be a ' building ' for the puposes of the Act only if it is let or intended to be let. As a portion in the occupation of the landlord cannot be said either to be let or intended to be let such portion will not constitute a building under the Act and could only be termed as part of a building.

Hence where a portion of a building has been let out to a tenant and the other portion remains with the landlord the case would come within section 7 (3) (*c*) of the Act. There may also be cases where a landlord in occupation of a part of a building may *bona fide* require the rest of it even though he may be in occupation of a different building as a tenant. It is not necessary in such cases that the additional accommodation sought for should be in respect of the same business carried on by the landlord in the other part of the building.

G. Ramanujam and *V. Ramaswami*, for Petitioner.

T. M. Krishnaswami Ayyar and *A. Balasubrahmanyam*, for Respondent.

R.M. ——— *Petition dismissed.*

Dorairaj *v.* Regional Inspector of M.C. & L.B.
Ramachandra Iyer, J. W.P. No. 569 of 1959.
3rd November, 1960.

Madras Village Panchayats Act (X of 1950), *sections* 42, 50 *and* 51—*Powers of Inspector and Panchayat—Inspector—If can direct a Panchayat to open a market.*

Section 51 of the Madras Village Panchayats Act (X of 1950) makes it clear that it is entirely optional for the Panchayat Board of any village to open and maintain a public market. The matters referred to under section 50 which the Inspector is empowered under sections 42 and 50 to direct the Panchayats to do, does not include the opening of a market. Hence an Inspector will have no authority under section 42 of the Act to direct a Panchayat to construct a market which it had decided not to construct.

M/s Row and *Reddy*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *M. K. Nambiyar* and *K. K. Venugopal*, for Respondent.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J. Weavers Mills Ltd. *v.* Malkisammal.
3rd November, 1960. C.R.P. No. 1510 of 1960.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *section* 40—*Scope of—Decree in a claim suit under Order* 21, *rule* 63, *Civil Procedure Code—Suit to set aside—Valuation for purposes of Court-fees.*

A claim suit under Order 21, rule 63 of the Civil Procedure Code is a continuation of the execution proceedings and in such a suit the valuation of the property

will be the value of the decree in execution of which the property was sold. A suit to set aside a decree in a claim suit on the basis of fraud or collusion will have to be valued on the amount of the decree in execution of which the property was sold and which was sought to be set aside in the earlier claim suit.

R. Gopalaswamy Ayyangar, for Petitioner.

R. Ramasubbu Ayyar and the Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Orders accordingly.*

Ramachandra Iyer, J.
3rd November, 1960.

Bakthavatsala Reddiar *v.* Nekkundram Panchayat.
W.P. No. 520 of 1958.

Madras Village Panchayats Act (X of 1950)—Panchayats—Right to levy license fee on brick-kilns within their limits.

The essential object of levying a license fee by a local authority is to provide supervision and control over the trade sought to be licensed by it. A Panchayat Board under the Madras Village Panchayats Act does not render any service for brick-kilns and no conditions are attached to the license which require supervision or control over them. Hence a Panchayat Board will have no jurisdiction to impose a license fee on brick-kilns merely because they want to augment their revenues for purposes of maintaining roads and providing a sanitary arrangements which are not peculiar to brick-kilns alone.

K. C. Jacob, S. K. L. Ratan and *J. Satyanarayana*, for Petitioner.

G. Ramanujam, for Respondent.

R.M. ——— *Rule absolute.*

Venkatadri, J.
4th November, 1960.

Kolandaivelu *v.* Koolayana.
C.R.P. No. 1305 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949) *and Act (XVIII of* 1960), *sections* 7 *and* 35*—Landlord—Meaning of—Own occupation—Scope of—Requisition of a member of joint Hindu family—If owner can apply for eviction—Effect of section* 35 *of new Act on pending proceedings.*

By virtue of section 35 of the Madras Buildings (Lease and Rent Control) Act, 1960, all pending proceedings taken under the earlier Act have got to be decided under the relevant provisions of the new Act.

The expression 'for his own occupation' in section 7 (3) of the Act (now section 10 of the new Act) cannot be restricted only to the occupation of the landlord himself but should be interpreted to include the individual's family and dependents. It is proper and desirable for the Court to take into consideration the context of social order, customs, habits and ideas of living of the community to which the individual belongs and then come to a conclusion about the *bona fide* requirement of the landlord.

A landlord is entitled to apply under the Act for eviction of the tenant on the ground that he requires the building for establishing a separate residence for his son. The fact that the son has got a right in other joint family property or that he is living in the joint family house cannot be a bar to the maintainability of the application. Mere constructive or notional possession of other properties cannot constitute occupation of a building of his own under the Act.

(The provisions under the new Act, section 10, making express provision for the right of the sons pointed out. A father can file an application on the ground of his son's requirement).

M. Natesan, for Petitioner.

N. R. Raghavachari, for Respondent.

R.M. ——— *Petition dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur, K. C. Das Gupta, Ragubar Dayal and N. Rajagopala Ayyangar, JJ.
18th November, 1960.

Pratap Singh *v.* State of Madhya Pradesh.
Cr.A. No. 106 of 1956.

Criminal Procedure Code (V of 1898), *section,* 421—*Constitutional validity—Penal Code (XLV of* 1860), *section* 307—*Indian Arms Act, section* 19 (*f*).

"Different considerations arise in the case of a convicted person who presents his petition of appeal in person or through a pleader in which case he or his pleader must be heard before the appeal is summarily dismissed." It was held that the basis for making the classification "has a reasonable connection with the object of the legislation providing for the appeal.".

Section 421 of the Criminal Procedure Code was held to be *intra vires* the Constitution.

A. D. Mathur, for Appellant.

B. K. B. Naidu, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
21st November, 1960.

Damodar Valley Corporation *v.* The State of Bihar.
C.A. No. 285 of 1959.

Sales Tax—Sale with the condition of re-purchase and not one of hire—Test—Liability to sales tax.

The Court held that the controversy between the parties must be resolved with reference to the terms of the contract between them. After examining them the Court held that the transaction in the present case was one of sale with the condition of re-purchase and not one of hire. The Court further held that the transaction relating to the equipments were "sales" and liable to sales tax.

M. C. Setalvad, Attorney-General of India, for Appellant.

A. V. V. Shastri, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
21st November, 1960.

Hingir Rampur Coal Co. *v.* State of Orissa.
Writ Petition No. 87 of 1959.

Orissa Mining Areas Development Fund Act, 1952 *and the Rules made thereunder—Entries* 23 *and* 66 *of List II of the Seventh Schedule of the Constitution—Whether cess, a tax or duty or only a fee.*

The Orissa Mining Areas Development Fund Act had been passed with a view to developing the mining areas in a State which was under-developed, though "mineral wealth of great potential value" existed therein. The achievement of this object necessitated that provision should be made for improving the communications by constructing good roads and by providing means of transport, supply of water and electricity. The cess levied by the impugned Act was neither a tax nor a duty of excise, but a fee.

The fee levied by the impugned Act was relatable to Entries 23 and 66 in List II of the Seventh Schedule of the Constitution. The State Legislature, therefore, was competent to pass the impugned legislation. The Orissa Mining Areas Development Fund Act was not *ultra vires* the Constitution.

M. P. Amin, for Petitioner.

A. V. V. Shastri, for Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. N. Wanchoo, JJ.
22*nd November*, 1960.

Delhi Cloth and General Mills Ltd. *v.* Rameshwar Dayal.
C.A. No. 353 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 33-*A—Re-instatement—If can be ordered as interim relief.*

The management would have to pay full wages to the employee if they did not permit him to work in the interim period. Where the tribunal, while considering a complaint under section 33-A of the Industrial Disputes Act had to decide whether or not an employee should be reinstated " it is not open to the tribunal to order reinstatement as an interim relief". That relief would be the main relief to which the employee would be entitled "only if the employer failed in the proceedings initiated by the employee."

(1960) S.C.J. 317 and (1960) S.C.J. 999 considered.

M. C. Setalvad, Attorney-General of India, for Appellant.

G. S. Pathak, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

S. J. Imam, S. K. Das, J. L. Kapur, A. K. Sarkar and K. Subba Rao, JJ.
23*rd November*, 1960.

Abdul Hakim Querishi *v.* State of Bihar.
Writ Petitions Nos. 15 of 1959, 21 of 1959 & 14 of 1960.

Bihar Preservation of Animals (Amendment) Act, 1958—*The Madhya Pradesh Agricultural Cattle Preservation Act,* 1959—*Uttar Pradesh Preservation of Cow Slaughter (Amendment) Act,* 1958—*Constitutional validity.*

" We are clearly of the view that the almost unanimous opinion of experts is that after the age of 15, bulls, bullocks and buffaloes are no longer useful for breeding, draught and other purposes and whatever little use they may have then is greatly off-set by the economic disadvantages of feeding and maintaining unserviceable cattle." Regarding the provisions contained in the U. P. Act, providing that the animal would not be slaughtered within 20 days from the date of the issue of the certificate was also held *ultra vires*.

Regarding the Madhya Pradesh Act's provision that it would be for the accused to prove that the animal was not slaughtered, purchased or sold in contravention of the provision of the Act, it was held to be valid because the evidence involved in the case would be " within the special knowledge of the person himself."

H. J. Umrigar and Frank Anthony, for Petitioners.

L. K. Jha, for the State of Bihar.

H. N. Sanyal, Additional Solicitor General of India, for the State of Uttar Pradesh.

M. Adikari, Advocate-General, M.P., for the State of M. P.

G.R. *Petitions allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, and K. N. Wanchoo, JJ.
30*th November*, 1960.

Jeshtamani Gulabrai Dholakia *v.* Scindia Steam Navigation Co., Ltd.
C.A. No. 395 of 1959.

Industrial Disputes Act (XIV of 1947)—*Air Corporation Act,* 1953, *section* 20.

The Court upheld the decision of the Industrial Tribunal because the appellants having been informed by the Respondents' company had not exercised the option given to them by the Proviso of section 20 (1) of Air Corporation Act to opt for the corporation from August 1, 1953, as their employees.

N. C. Chatterjee, for Appellants.

I. N. Shroff, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
5th *December*, 1960.

Lt. Col Khajoor Singh *v.* The Union of India.
C.A. No. 37 of 1955.

Constitution of India (1950), *Article* 32(2-*A*) (*applicable to Jammu and Kashmir State only*)—*Article* 226 (*a*) *of the Constitution—Scope—Writs against Union of India.*

By Majority : Under Article 226 (*a*) of the Constitution the power is to be exercised " throughout the territories in relation to which the High Court exercises jurisdiction", that is to say, the writ issued by the Court could not run beyond the territories subject to its jurisdiction, and (*b*) the person or authority to whom the High Court was empowered to issue such writs must be " within those territories " which clearly implied that they must be amenable to its jurisdiction either by residence or location within those territories. This view was the corect one.

V. S. Sawhny, for Appellant.

C. K. Daphtary, Solicitor General of India, for Respondents.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
5*th December*, 1960.

Rameshwar Dayal *v.* State of Punjab.
C.A. No. 438 of 1960.

Constitution of India (1950), *Article* 233 (2)—*High Court's* (*Punjab*) *Order*, 1947—*Meaning of an Advocate or pleader—Whether they include an Advocate enrolled in the erstwhile Lahore High Court—Article* 133 *of the Constitution.*

Advocates of the High Court were entitled as a matter of right to practise in the post-partition Punjab High Court by virtue of the High Courts (Punjab) Order, 1947.

The Court said the appointees " had the necessary standing to be eligible under Clause (2) of Article 233 ".

A. S. Chari, for Appellant.

S. M. Sikri, Advocate-General, Punjab and *A. V. V. Shastri,* for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and N. Rajagopala Ayyangar, JJ.
6*th December*, 1960.

Gazula Dasaratha Rama Rao *v.* State of Andhra Pradesh.
Writ Petition No. 133 of 1959.

Madras Hereditary Village Offices Act (*III of* 1895), *section* 6 (1) *restricting the choice of village officers to persons "from amongst the families of the last holders is unconstitutional as it contravenes Article* 14 *of the Constitution* ".

Section 6 of the Madras Hereditary Village Offices Act was struck down on the ground that the impugned provisions placed a restriction on the ground of "descent" and therefore held as *ultra vires.*

Further held that the impugned provisions of the Act embodied a principle of discrimination and was in contravention of Article 16 (2) of the Constitution.

A. V. V. Shastri, for the Petitioner.

D. Narasa Raju, Advocate-General, A. P., for Respondents.

G.R. — *Petition allowed.*

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[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao & J. C. Shah, JJ.
9*th December*, 1960.

Munnathat Thatuni Moopil Nair *v.* State of Kerala. Writ Petitions Nos. 13-24. 42 & 46-54 of 1958.

Travancore-Cochin Land Tax Act, 1955—Ultra vires *the Constitution being discriminatory and confiscatory in charactor—Sections* 4 *and* 5 *of the Act—Validity.*

The Travancore-Cochin Land Tax Act, 1955, enabling the Government to levy a uniform tax on lands and section 5 thereof laying down that the rate shall be Rs. 2 per acre are unconstitutional, as inequality is writ large in the Act and is inherent in the veiy provisions of the taxing section. It is one of those cases where a lack of classification in the provisions creates inequality. The Act did not provide for (1) the issue of the notice to the assessee, (2) for the submission of a return and (3) for any appeals and there was no attempt to make any classification of the various classes of lands.

M. R. K. Pillai, for Petitioner.

K. V. Suryanarayana Aiyar, Advocate-General, Kerala, for Respondents.

G.R. *Petitions allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ.
9*th December*, 1960.

Kishan Chand Arora *v.* Commissioner of Police, Calcutta. Writ Petition No. 22 of 1960.

Calcutta Police Act (1866), *section* 39—*Is not* ultra vires—*Constitution of India* (1950), *Article* 19.

The Calcutta Police Act (1866) being a pre-Constitution Act, it must be fairly and reasonably interpreted, and the section should not be struck down, though it had not been worded in a manner which would show that the considerations arising from the provisions of Article 19 of the Constitution of India 1950 were kept in mind. The Act provides for guidance of the discretion of the Commissioner of Police and in this view did not violate the fundamental right of the petitioner to carry on business.

B. P. Maheshwari, for Petitioner.

S. M. Bose, Advocate-General, West Bengal, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
9*th December*, 1960.

Voltas Ltd *v.* Its Workmen and another. C.A. Nos. 153-154 of 1960.

Industrial Disputes Act (XIV of 1947)—*Profits of the Company—Surplus available for calculating bonus—Contributions to political funds—If to be deducted as trading expense.*

The contributions by a company to the political funds of a party could not be deducted as a trading expense when working the available surplus for calculating the bonus payable to workmen.

R. N. & Co, for Appellant.

J. Sharma, for Respondents.

G.R. *Appeal dismissed.*

Veeraswami, J.
20th October, 1960.

Abdul Majid *v.* Papathi Ammal.
S.A. No. 880 of 1958.

Transfer of Property Act (IV of 1882), section 53—Fraudulent transfer—What is.

Madras Indebted Agriculturists (Re-payment of Debts) Act (I of 1955), section 7—Presumption under.

The test to see whether a transfer is a fraudulent one within the meaning of section 53 of the Transfer of Property Act, is to find out whether the debtor has retained any benefit for himself under the impugned transfer. Hence, even in cases where a property is sold to discharge an earlier mortgage, if out of the sale price the debtor receives some consideration to himself, however small it may be, the transfer will be hit by section 53. The fact that the major part of the sale price went in discharge of an earlier mortgage on the very property covered by the sale-deed, does not in any way affect the position.

The statutory presumption against the validity of a sale enacted in section 7 of the Madras Indebted Agriculturists (Re-payment of Debts) Act, 1955, will be attracted in cases where a sale is effected under which the vendor derives some benefit for himself, even though the major portion of consideration for the sale goes in discharge of an earlier mortgage on the very property sold.

R. Gopalaswami Ayyangar, for Appellant.

N. R. Sesha Ayyar, for Respondent.

R.M. ——— *Appeal allowed. No leave.*

Rajamannar, C.J. and Veeraswami, J.
28th October, 1960.

Working Journalists of the 'Hindu' *v.*
Management of the 'Hindu'.
W.A. No. 144 of 1959.

Industrial Disputes Act (XIV of 1947), sections 2(k), 10 (1) (c) and 15—Scheme and scope of—Industrial dispute referred for adjudication—If could cease to be an industrial dispute subsequently—Jurisdiction of Labour Court.

An industrial dispute within the contemplation of the Industrial Disputes Act, 1947, is a collective dispute that existed or was apprehended prior to the date of its reference to the Labour Court for adjudication. Whether such a dispute referred to for adjudication continued, even after its reference, to retain its character as such has no bearing upon and does not affect the jurisdiction of the Labour Court to proceed and make an award on the industrial dispute referred to it. The jurisdiction of the Labour Court springs from the reference made to it and is confined to the dispute as referred to it, which means the dispute which existed or was apprehended prior to the date of its reference.

(Scheme and provisions of the Act analysed—Object of the legislation indicated.)

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Appellant.

R. Ramamurthi Ayyar, for Respondent.

R.M. ——— *Appeal allowed.*

Jagadisan and
Kailsam, JJ.
1st November, 1960.

Narayana Ayyangar *v.*
Commissioner of H.R. and C.E., Madras.
Appeal No. 199 of 1957.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), section 6(13)—'Religious charity'—Feeding of Brahmins during festival season—When a religious charity.

To constitute a 'religious charity' within section 6 (13) of the Madras Hindu Religious and Charitable Endowments Act, 1951, there should be a public charity which should be associated with a Hindu festival or observance of a religious character. The charity, however, need not be connected with a math or temple. In order to hold that a feeding of brahmins on festive occasion is associated with the festival itself, there should be a unity of purpose or a common object or common endeavour between the festival itself and the charity. The mere fact that a feeding charity is held on an important festival occasion is not by itself enough to establish

any link between the occasion and the charity itself. Where in a place of sacred shrine feeding of people on an important festival of the temple is done, independently of the temple festival, the feeding charity cannot be held to be a religious charity within the meaning of section 6 (13) of the Act.

S. Rangaswami Ayyangar and *T. Krishnaswami Ayyangar*, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *R. G. Rajam*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan and Srinivasan, JJ.
1st November, 1960.

M. K. M. & G. Sanjeevi Chettiar *v.* State of Madras.
T. R. C. No. 72 of 1957.

Madras General Sales Tax Act (IX of 1939)—*Departmental Officers inspecting premises and finding anamath account books—Officers however disabled from seizing the books—Reliance on the note prepared by the officer—Scope and extent of.*

Obiter.—Where a departmental officer under the Madras General Sales Tax Act inspects a place of business and inspects some account books in the course of a few minutes, but the books were however removed before he could seize them, great reliance cannot be placed on his notes that several lakhs of rupees worth of turnover has escaped assessment. Even if his statement that three to four lakhs of rupees turnover might have escaped assessment the taxing authority will not be justified in taking the figure at the higher lakh. The benefit of the ambiguity in the statement of the officer should necessarily go to the assessee.

U. Somasundaram, P. Kothandaraman and *R. Rajagopalan*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopalan and Srinivasan, JJ.
7th November, 1960.

Palaniappa *v.* State of Madras.
T. C. No. 96 of 1958.

Madras General Sales Tax Act (IX of 1939), *section* 22—*Exemption under—Pre-requisites.*

What section 22 of the Madras General Sales Tax Act, 1939, requires is not only that a sale or purchase should be for consumption within the State of Madras, but that the delivery in Madras should be the direct result of the sale or purchase. Where an assessee purchases the goods in Madras, there could be no element of transport at all to bring it as a case of delivery, direct or otherwise, within the meaning of section 22.

A. Shanmugavel, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan and Srinivasan, JJ.
8th November, 1960.

State of Madras *v.* Asher Textiles Ltd.
T. R. C. No. 151 of 1958.

Madras General Sales Tax Act (IX of 1939), *section* 12(2)—*Revisional powers under—Escaped turnover—What amounts to—Amendment of law—Effect of.*

Where the law relating to levy of sales tax is amended with retrospective effect, it was the amended law that should be deemed to have been administered even on the date of the original order. An order made on the basis of the law as it then stood, though valid then, would become wrong by virtue of the subsequent amendment of the law with retrospective effect.

(1959) S.C.J. 1054, referred.

The Government Pleader (*A. Alagiriswami*), for Petitioner.

T. R. Ramachandran and *S. Jagannadhan*, for Respondent.

R.M. ——— *Petition allowed.*

Veeraswami, J.
8th November, 1960.

Palayamkottai Municipality *v.* Kantayya.
S.A. No. 73 of 1959

Madras District Muncipalities Act (V of 1920), *section* 88 (4)—*Effect of—Transferee of part of a property—If liable to pay the tax on the entire property due to failure of transferor to give notice of the transfer.*

It is clear from the terms of sub-section (4) of section 88 of the Madras District Muncipalities Act, that it only provides for the transferor's continued liability in the event of his failure to notify the Municipality within the time specified in sub-section (1) of the section, of the transfer effected by him. The penalty for non-intimation is that notwithstanding the transfer made by an owner of a portion of his property, his liability to pay the entire tax in respect of the whole property would continue till the change is made in the registry of the Municipality. Sub-section (4) (*a*) no doubt also provides that the liability of the transferee to pay the tax on that part of the property purchased by him is not in any way affected by reason that the transferor's liability to pay the tax on the entire property continues. But that does not mean that a transferee of a part of a property will be liable to pay the tax even in respect of the part not transferred to him.

B. V. Viswanatha Ayyar, for Appellant.

K. Srinivasan and *K. Shanmugam*, for Respondent.

R.M. *Appeal dismissed. No leave.*

Ramachandra Iyer, J.
9th November, 1960.

Venkataswami *v.* Assist. Collector, Salem District.
W.P. No. 986 of 1958.

Madras Hereditary Village Offices Act (III of 1895), *section* 23 *and rule* 20—*Appeal to Board of Revenue—If personal hearing should be given.*

Under the rules framed under the Madras Hereditary Village Offices Act there is no obligation to give a personal hearing in appeals before the Board of Revenue, much less in second appeals. Nor does a mere failure to give a personal hearing by an Appellate Authority, in the absence of a specific provision to the contrary, constitute a violation of any principle of natural justice.

V. Srinivasan and *D. V. Sivagnanam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Veeraswami, J.
16th November, 1960.

Corporation of Madras *v.* Vijayalakshmi.
S.A. No. 26 of 1959.

Madras City Municipal Act (IV of 1919), *sections* 218 (2) *and* 390-*A and Limitation Act (IX of* 1908), *section* 29 (2)—*Scope.*

A suit for recovery of improvement charges for work done by the Corporation from the owner of the property liable therefor will be a claim under section 218 (2) of the Madras City Municipal Act and the period of limitation therefor will be governed by section 390-A of the said Act. The applicability of section 29 of the Limitation Act to such cases is expressly excluded and there could be no question of saving the limitation by acknowledgment. The claim will be barred if the suit is not instituted before the expiry of three years from the date when a suit might first have been instituted, *i.e.*, when the Corporation incurred the expenses.

T. Chengalvarayan, for Appellant.

T. R. Srinivasa Ayyangar, for Respondent.

R.M. *Appeal dismissed. No leave.*

Srinivasan, J. Chinnaswami *v.* Rajamba Bai.
23*rd November*, 1960. S.A. No. 70 of 1959.

Hindu Marriage Act (XXV of 1955), *section* 11—*Status of parties—Suit for declaration of—Applicability of the maxim* in pari delicto.

Where the status of parties, whether or not one is the wife of the other, is concerned, the principle of *pari delicto* cannot be relied on to refuse to grant the declaration sought for. Where a marriage is void *ab initio* by virtue of the Statute prohibiting bigamous marriage, the fact that both parties to such a marriage were guilty is not a ground for refusing the relief of declaration that the marriage is void at the instance of either party.

V. Srinivasa Ayyar, K. Raman and *P. V. B. Mani*, for Appellant.

S. Mohan Kumaramangalam and *S. Palaniswami*, for Respondent.

R.M. *Appeal allowed.*

Veeraswami, J. Esther G. John *v.* Samuel Nadar.
28*th November*, 1960. S.A. No. 179 of 1959.

Succession Act (*XXXIX of* 1925), *sections* 265 *and* 286 *and Madras Civil Courts Act* (1873), *section* 29 (1)—*Effect of—Power of Subordinate Judge to deal with contentious testamentary matters—Scope of.*

It is no doubt true that under the provisions of sections 265 and 286 of the Indian Succession Act, a District Delegate is not competent to deal with a contentious testamentary matter. But by virtue of the provisions of section 29 (1) of the Madras Civil Courts Act and the notification issued by the High Court in pursuance thereof, the Subordinate Judges are empowered to take cognizance of any proceedings, including contentious proceedings, under the Indian Succession Act which cannot be disposed of by a District Delegate.

(1932) 62 M.L.J. 622 : I.L.R. 55 Mad. 701 and (1956) 2 M.L.J. 288, referred.

D. Ramaswami Ayyangar and *T. K. Subba Rao*, for Appellant.

K. S. Ramamurthi and *T. R. Mani*, for Respondent.

R.M. *Appeal dismissed.*
Leave granted.

Rajamannar, C.J. and Venkatadri, J. Chandriah *v.* Valchi Madhaviah.
13*th December*, 1960. C.C.C.A. No. 50 of 1957.

Partership—Partners—If entitled to interest on their capital—Interest on money overdrawn by a partner—When awarded.

It is now well settled that it is not the practice of Courts to allow interest on moneys overdrawn by a partner from the partnership funds unless of course there is a clear agreement to that effect or there are special circumstances rendering it necessary that interest should be charged. Similarly where interest on capital is payable between the partners it stops running from the date of dissolution unless otherwise agreed. In order to entitle a partner to interest on moneys brought by him into the partnership business there must be (*a*) an express agreement to that effect; or (*b*) contract of the trade partnership, a course of dealing between the partners usually shown from the partnership books or other facts and circumstances from which such an agreement may be implied ; or (*c*) any trade custom to that effect ; or (*d*) a statutory provision which entitles him to such interest (*e.g.*) section 13(*d*) of the Partnership Act which recognises the right of a partner to charge interest on advances made by him as distinguished from the capital.

A. Durairaj, C. Vasudevan and *P. Venkataswami*, for Appellant.

A. Sundaresan, G. Ramakrishna Ayyar and *P. Ramnujam Chetty*, for Respondent.

R.M. *Orders accordingly.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.*
7th *December,* 1960.

Shri Manna Lal *v.* The Collector of Jhalwar.
C.A. No. 88 of 1957.

Rajasthan Public Demands Recovery Act, 1952, *sections* 3, 4 *and* 6—*Article* 14 *of the Constitution—Scope.*

A point was sought to be made that in each case there were two documents, namely, the application by the appellants and the receipt for the moneys advanced signed by them, whereas a public demand as defined in the Act, required one instrument. It is enough to say in regard to this contention that the Act does not say that the moneys shall be due under a single instrument. It is well-known that in a statute a singular includes the plural. In any case, the two documents constituted the written agreement between the parties and that is enough to satisfy the requirement of the Act, even if read in the way suggested by the appellants.

It is said that the Act makes a distinction between other bankers and the Government as a banker, in respect of the recovery of moneys due. It seems to us that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Article 14 of the Constitution

S. K. Kapur and *Ganpat Rai,* for Appellants.

N. S. Bindra, Senior Advocate (*D. Gupta,* Advocate, with him), for Respondents.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.*
7th December, 1960.

Surajpal Singh *v.* The State of Uttar Pradesh.
Cr. A. No. 169 of 1959.

Prevention of Corruption Act (II of 1947, *section* 5—*Presumption under—Scope and applicability.*

" It is not open to the appellate Court to affirm the conviction of the appellant on an entirely new case never suggested against the appellant at any earlier stage. It is unfortunate that in this case the Courts below did not choose to rely on the rule of presumption laid down in sub-section (3) with reference to the charge under clause (*c*) of sub-section (1) of section 5 of the Prevention of Corruption Act. But that misfortune cannot now be repaired by evolving out of a vacuum as it were a new case against the appellant based on clause (*a*) or clause (*d*) of sub-section (1) of section 5 in support of which no facts were even alleged or suggested."

(1960) 1 S.C.R. 461 : (1960) S.C.J. 160 : (1960) M.L.J. (Cr) 91, referred to.

Nuruddin Ahmed and *Naunit Lal,* for Appellant.

G. C. Mathur and *C. P. Lal,* Advocates, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
12th December, 1960.

Ambica Mills Co., Ltd. *v.* S. B. Bhatt.
C.A. No. 243 of 1959.

Payment of Wages Act (IV of 1936)—*Industrial Disputes Act (XIV of* 1947)—*Finding as to nature of work done by employee*—Res judicata.

The only point which calls for decision is whether or not the work done by the three respondents takes them within the category of cut-lookers specified under clause (5), and as we have already pointed out, on an earlier occasion the authority has found in favour of two of the three respondents when it held that they were folders doing cut-looking. If the said finding amounts to *res judicata* it is in favour of the two respondents and not in favour of the appellant; that is why the learned Attorney-General did not seriously dispute the correctness of the decision of the High Court on the question of *res judicata.*

M. C. Setalvad, Attorney-General of India, for Appellant.
Vithalbhai Patel, for Respondent.
G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

P. B. Gajendragadkar and *K. N. Wanchoo, JJ.*
12th December, 1960.

The Lord Krishna Textile Mills *v.* Its Workmen.
C.A. No. 427 of 1959.

United Provinces Industrial Disputes Act, 1947 (*XXVIII of* 1947)—*Industrial Disputes Act* (*XIV of* 1947), *section* 33—*Findings of management—Tribunal if can sit in judgment over.*

Having carefully considered the reasons given by the Tribunal in its award under appeal, we have no hesitation in holding that the appellant is fully justified in contending that the Tribunal has assumed jurisdiction not vested in it by law, and consequently its refusal to accord approval to the action taken by the appellant is patently erroneous in law.

As we have already pointed out the Tribunal had no jurisdiction to sit in appeal over the findings of the enquiry as it has purported to do. The result is that the conclusion of the Tribunal in regard to all the workmen is unjustified and without jurisdiction.

M. C. Setalvad, Attorney-General of India, for Appellant.
B. P. Maheshwari, Advocate, for Respondents.
G.R. ——— *Appeal allowed.*

[SUPREME COURT]

S. J. Imam, J, L. Kapur, K. C. Das Gupta, Raghubar Dayal and *N. Rajagopalan Ayyangar, JJ.*
13th December, 1960.

Diamond Sugar Mills Ltd. *v.* The State of Uttar Pradesh.
C.A. No. 35 of 1959.

U. P. Sugarcane Cess Act, 1956—*Vires of—List II of the Government of India Act*, 1935—*Article* 277 *of the Constitution of India—Entry* 52, *List II—State List, Seventh Schedule, Constitution of India.*

By Majority.—Section 3 of the U.P. Sugarcane Cess Act, 1956, empowering the Governor to impose a cess on the entry of sugarcane into the premises of a factory did not fall within Entry 52 of the State List. As there is no other Entry in either State List or Concurrent List in which the impugned law could fall, there is no escape from the conclusion that this law was beyond the legislative competence of the State Legislature. The law as enacted in section 3 of the U. P. Sugarcane Cess Act, 1956, must therefore be struck down as invalid.

H. N. Sanyal, Additional Solicitor General of India, for Appellants.
G. C. Mathur, for Respondents.
G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and *J. C. Shah, JJ.*
3rd January, 1961.

Tulsidas Kilachand *v.* C. I. T.
C.As. Nos. 134-137 of 1959.

Income-tax Act (*XI of* 1922), *section* 16 (1) (c) *and* (3) (b)—*Scope.*

The Court upheld the decision of the Bombay High Court which replied the undergiven questions referred to it, in the affirmative :—

Whether on a true construction of the deed of declaration of trust, dated 5th March, 1951, the net dividend income of Rs. 30,404 on 120 shares of Kilachand Devchand & Co., Ltd., and 244 shares of Kesar Corporation Ltd., held under trust by the assessee for the benefit of his wife was income liable to be included in the total income of the assessee.

R. J. Kolah, for Appellant.
K. N. Rajagopala Shastri, for Respondent.
G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyngar and J. R. Mudholkar, JJ.
12th January, 1961.

Babulal Parate *v.* State of Maharashtra.
W. P. No. 90 of 1956.

Criminal Procedure Code (*V of* 1898), *section* 144—Intra vires *the Constitution of India* (1950).

Held that maintenance of law and order was the duty of the executive ; the question of the formation of opinion " as to whether there is an emergency or not must necessarily rest with the executive ".

" It cannot be said that by reason of wide amplitude of the power conferred on Magistrates by section 144, Criminal Procedure Code, it places unreasonable restrictions on fundamental rights."

R. S. V. Mani, for Petitioner.

N. S. Bindra, for Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
12th January, 1961.

G. V. Godse *v.* State of Maharashtra.
W. P. No, 305 of 1960.

Constitution of India (1950), *Article* 32—*Remissions in Jail—Bombay Jail Manual—Sections* 55 *and* 58 *of the Indian Penal Code* (*XLV of* 1860).

" In every case in which the sentence of transportation of life shall have been passed, the State Government may commute the sentence for imprisonment of either description for a term not exceeding fourteen years ". Under section 58, the prisoner shall be treated as undergoing rigorous imprisonment till such time as he is " transported ". " In view of this it was held that Godse could be treated as a prisoner undergoing " rigorous imprisonment."

Without the formal remission of the sentence " the sentence of life imprisonment could not be treated as one of a " definite period ". After 1955, a convict sentenced to life imprisonment is bound in law to serve the life term in prison unless the said sentence is commuted or remitted by the appropriate authority under the relevant provisions of the Indian Penal Code or the Criminal Procedure Code.

Petitioner, in person.

H. N. Sanyal Additional Solicitor-General of India, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. B. Mudholkar, JJ.
12th January 1961.

Rabia Bai *v.* Ogep.
C.A. No. 22 of 1956.

Administration of Evacuee Property Act (*XXXI of* 1950), *section* 40 (1) *and* (4) (a)—*Scope.*

It is significant that though the provisions of section 40 (1) are drastic they have been deliberately made retrospective and that emphatically brings out the aim and

object of the Act; and it would be unreasonable to ignore this aim and object of this Act in construing the expression 'good faith' in section 40 (4) (*a*). We would therefore hold that having regard to the aim and object of the Emergency Legislation with which we are concerned, in the present case the expression has been properly construed by the respondent, when he held that a deliberate intention to defeat the apprehended application of the Evacuee law which was responsible for transfer in question brings the transfer within the mischief of section 40 (4) (*a*).

A. V. Viswanatha Shastri, for Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, K. Subba Rao and Raghubar Dayal, JJ.
13th January, 1961.

Saibal Kumar Gupta *v.* B. K. Sen.
Cr.A. No. 100 of 1958.

Contempt of Courts Act (XXXII of 1952), *section* 3—*Scope.*

By Majority (with *Subba Rao, J., dissenting*) :—The record does not establish that at any time the appellants have made comments on the case under section 497, Indian Penal Code, pending against B. K. Sen or in respect of any matter pending in connection with that case in the Calcutta High Court. We have looked into the record of the case and have no hesitation in saying that the appellants at no time intended to interfere with the course of justice and their conduct did not tend to interfere with the course of justice. The appellants have been careful in making no comments on any proceedings pending in the Court of law or the issues arising out of them.

In these circumstances we are of the opinion that the offence of contempt of Court by the appellants has not been established.

G. S. Pathak, for Appellants.

L. K. Jha, for Respondent.

G.R. *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
21st October, 1960.

Ellerman and Buckhall Steamship Co., Ltd. *v.* Sha Bhugajee Sonmull.
C.C.C.A. Nos. 52 and 53 of 1957.

Carrier—Carriage by sea—'Clean Bill of Lading'—Meaning of.

A 'Clean Bill of Lading' is one that does not contain any reservation as to the apparent good order or condition of either the goods themselves or their packing. A defect in packing, if noted in a bill of lading, will render it an unclean bill. But the mere fact that the bill of lading mentioned that the goods were packed in used packing material, will not by itself make it an unclean bill as in some cases used materials would be better suited for packing than new or unused ones.

Messrs. King and *Partridge,* for Appellant.

V. Tyagarajan, M. A. Rajagopalan, V. Rajagopalachari and *S. Ramiah,* for Respondents.

R.M. *Orders accordingly.*

Jagadisan and Kailasam, JJ.
2nd November, 1960.

State of Madras *v.* Parisutha Nadar.
Appeal Nos. 169 and 230 of 1957.

Land Acquisition Act (I of 1894) *and Madras Estates Abolition and Conversion into Ryotwari Act (XXVI of* 1948)—*Notification vesting land in an erstwhile estate in the Government—If could defeat the claim of the owner for compensation.*

On principle when once the Government avails itself of the provisions of the machinery under the Land Acquisition Act for compulsory acquisition, treating the subject-matter of the acquisition as not belonging to itself but to others, the State Government comes under an obligation to pay the compensation as provided under the Act.

It is not open to the Government in the course of the proceedings to put forward its own title to the property sought to be acquired so as to defeat the rights of the persons entitled to the compensation. A notification made under section 3 of the Madras Estates Abolition Act cannot have the effect of defeating the right of the claimant for compensation under the Land Acquisition Act.

The Government Pleader (*A. Alagiriswami*) and *G. Ramanujam*, for Appellant.

T. R. Srinivasan and *T. Ramalingam*, for Respondents.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, J.
9th November, 1960.

Palappa Nadar *v.* Collector of Central Excise, Madras.
W.P. No. 590 of 1958.

Central Excise and Salt Act (I of 1944), *section* 35—*Power of remand—If available to the appellate authority.*

Though section 35 of the Central Excise and Salt Act, 1944, does not in express terms confer a power of remand on the appellate authority, still such a power is inherent in and is an ordinary incident of the appellate power. But unless the appellate authority in terms remands the matter while setting aside an order under appeal, the order passed in appeal will be final under section 35 (2) and the Collector will have no jurisdiction to initiate fresh proceedings.

N. Arunachalam, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Jagadisan and Kailasam, JJ.
9th November, 1960.

Ganapathi *v.* Ayyakannu.
C.R.P. No. 943 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 2 (*a*)—*Cultivating tenant—If includes a sub-lessee or under lessee.*

Under the general law of landlord and tenant an under-lessee being only a holder of a derivative interest from the lessee cannot have higher rights than his own assignor. Statutory tenants under special enactments like the Madras Cultivating Tenants' Protection Act are not persons having an estate in relation to the landlord but have got only the limited rights conferred by the statute. A statutory tenant's rights are purely personal to him and neither the heirs nor an under-lessee from such tenants can claim to have any interest in the demised property derived from the chief tenants. A sub-lessee or under-lessee from a cultivating tenant is wholly outside the scope of the Madras Act XXV of 1955.

(1959) 1 M.L.J. 25, approved. Case-law reviewed.

K. Raman and *V. Ratnam,* for Petitioner.

M. S. Sethu, for Respondent.

R.M. ——— *Petition allowed.*

Veeraswami, J.
11th November, 1960.

Sree Sidhi Budhi Vinayagar Devasthanam *v.* Marimuthu.
S.A. No. 35 of 1959.

Presidency Small Cause Courts Act (IX of 1887), *section* 47—*Scope and obejct of.*

Madras City Tenants Protection Act (II of 1922) *as amended by Act XIX of* 1955, *section* 10—*Person dispossessed by a void order of Court—If could claim the benefit of protection.*

The object of section 47 of the Presidency Small Cause Courts Act is to stay the execution of an order made under section 41, the validity of which order will depend upon the suit instituted by the occupant. The language of the section is explicit and mandatory and it directs the Court not to proceed with execution until the suit is disposed of. The section does not even seem to contemplate that the proceedings in execution should be stopped or suspended only upon an order of stay being made. The order for possession stands by operation of the section itself. A delivery of possession of immovable property effected in contravention of the section will be one without jurisdiction and will therefore be void. Whether there is a stay order or not by the Court, if a suit is instituted as contemplated by section 47 the bar to execution of the order of eviction would automatically come into play and would be effective until the disposal of the suit.

A tenant who is otherwise entitled to the benefit of the protection of the Madras City Tenants' Protection Act, as amended by Madras Act XIX of 1955, will not lose the protection merely because he has been dispossessed prior to the coming into force of the amending Act by an order of Court which is without jurisdiction and is voi d.

T. R. Sangameswara Ayyar, for Appellant.

R. Rangachari and *R. Raghunathan*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan and Kailasam, JJ.
15th November, 1960.

Ramachandra *v.* Kuppuswami.
C.R.P. No. 61 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 6-*A*—*Applicability—Transfer of suit from civil Court—When could be ordered.*

In order to attract the provisions of section 6-A of the Madras Cultivating Tenants' Protection Act three conditions must be fulfilled. First the defendant must be a cultivating tenant; secondly he must be entitled to the benefits of the Act and thirdly he must, on transfer of the proceedings from the civil Court to the Revenue Divisional Officer, be in a position to obtain one or other of the statutory reliefs provided in his favour under the Act. Without a concurrence of these three conditions no transfer of a suit could be ordered by a civil Court under the provisions of section 6-A of the Act. No such transfer could be ordered on any *prima facie* finding. Before a civil Court decides not to try a suit on the ground that the defendant is a cultivating tenant entitled to the benefit of the Act, it must reach a definite conclusion and must record a comprehensive finding that it has no jurisdiction to deal with the matter.

A suit for injunction *simpliciter* before a civil Court cannot automatically become converted into a petition for restoration to possession by the tenant under the Act when once it is transferred to the Revenue Divisional Officer on a tentative finding by the civil Court that the defendant is a cultivating tenant. The period of limitation prescribed under section 4 (3) of the Act creates a vested right in the landlord and there could in such circumstances be no question of any automatic conversion of one relief into something else which the party entitled has not sought for. In a suit for injunction in a civil Court to restrain the defendant from interfering with the plaintiff's possession and enjoyment of the lands, the defendant could not claim

any relief or benefit under the Act, even if he is a cultivating tenant, merely by changing the forum of adjudication shifted from the civil Court to the Revenue Court. A Revenue Court under the Act cannot grant any remedy by way of injunction.

(1958) 1 M.L.J. 232, (1958) 2 M.L.J. 184, differed.

(1960) 2 M.L.J. 26 (N.R.C.), referred.

(Case-law reviewed and discussed).

R. Viswanathan, for Petitioner.

K. Raman, for Respondent.

R.M. —————— *Petition allowed.*

Ramachandra Iyer, J.
17th November, 1960.

Kothandapani *v.* Seetharama.
A.A.O. No. 75 of 1960.

Practice—Execution—Court auction sale—Confirmation of—Nature of—Inadequacy of price—Relevant factors to be considered.

The condition as to confirmation of sale held in execution by a Court is intended to safeguard against irregularity or fraud in connection with the sale and against the property being sold at an inadequate price. The Court has undoubted discretion in refusing to accept, the highest bid at the auction held in pursuance of its orders, should that price be deemed inadequate. But, it is not in every case where a higher offer is made subsequent to the auction that a Court will be justified in refusing the highest bid at the auction. No hard and fast rule could be laid in such cases and the Court has to decide each case on its own merits. While the Court should no doubt see that an adequate price is fetched for the property sold, it is not desirable to refuse to accept the highest bid in the auction merely in the hope that some better price will be fetched if a resale is held. It is equally undesirable that sales held in pursuance of orders of Court should be nullified after a lapse of long time without any material to show that the previous sale was in anyway objectionable, merely because higher offers are forthcoming at that time.

K. S. Naidu and *R. Vijayan*, for Appellant.

V. Seshadri and *G. Viswanathan*, for Respondent.

R.M. —————— *Appeal allowed.*

Ramakrishnan, J.
17th November, 1960.

Mohd. Burhanuddin *v.*
Official Trustee of Madras.
C.R.P. No. 1477 of 1959.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *sections* 30 *and* 35 *—Effect of—Proceedings pending against orders under the earlier Act—If could be continued.*

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 4*—Fixation of fair rent —Principles of.*

It is no doubt true that section 30 of the Madras Act XVIII of 1960 exempts certain category of buildings from the operation of the Act. But section 35 (2) of the Act gives continuing effect to the rules, notifications and decisions given under the earlier Act XXV of 1949 and they are deemed to be under Act XVIII of 1960 for the purpose of giving prospective effect. Act XVIII of 1960 does not purport to take away the right of appeal or revision vested in a person under the earlier Act. Where the rights of parties were governed by the earlier Act till the passing of the new Act and a revision petition by the aggrieved party was pending the party will be entitled to obtain his remedy in the Revision under the old Act and section 30 of the new Act cannot divest him of that right.

In fixing fair rent under section 4 of the Madras Act XXV of 1949 the discretion given to the Controller to allow an increase in the rental value as entered in the Corporation books during the basic period, is limited to the maxima provided under section 4 (4) of the Act. In fixing the fair rent under the Act the Court should

no doubt respect the contract between the parties so long as the contract does not provide for a rent that exceeds the maximum fixed by the statute. But in cases where the rent agreed upon under the contract exceeded the maximum fixed by the statute, then on the principle that the tenant cannot contract himself out of the statute which gives him certain privileges, he should be given relief. The tribunals under the Act cannot fix a fair rent and impose other collateral obligations on the tenant regarding payment of tax, etc. All the obligations under a contract should be taken into consideration in arriving at a fair rent, which should be fixed as a definite sum.

V. Govindarajulu, for Petitioner.

O. Radhakrishnan, for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
24th November, 1960.

Murugan Transports *v.* Ratha Krishnan.
W.P. No. 1022 of 1958.

Minimum Wages Act (*XI of* 1948), *section* 20—*Summary procedure under—If could be availed of by discharged workmen.*

A claim under section 20 (2) of the Minimum Wages Act by discharged workmen, would be cognisable by the authority under sub-section (1) of the section.

(1959) 1 M.L.J. 213, diff.

K. K. Venugopal, for Petitioner.

B. Lakshminarayana Reddy (*amicus curiae*), for Respondent.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J.
30th November, 1960.

Azeez Bivi *v.* Masilamani.
C.R.P. No. 738 of 1960.

Madras Cultivating Tenants (*Payment of Fair Rent*) *Act* (*XXIV of* 1956), *section* 14(2)—*Rent Tribunal—Powers of remand —Scope of.*

Before the power of remand could be exercised by the Rent Tribunal under the provisions of the Madras Cultivating Tenants (Fixation of Fair Rent) Act, 1956, it is the duty of the Tribunal to ascertain whether the order of the Rent Court was right or not. The language of section 14 (2) of the Act is clear that a tenant who has not surrendered the excess land before the end of the agricultural year 1957 would not be entitled to apply for fixation of fair rent. A remand made on the assumption that the surrender could be made at any time is not valid and has to be set aside.

T. V. Balakrishnan and *N. Vanchinathan*, for Petitioner.

K. N. Subramanian, for Respondent.

A.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
1st December, 1960.

Parthasarathy *v.* Syed Mahaloo.
C.R.P. No. 975 of 1960.

Practice—Unstamped document impounded and sent for levying duty and penalty—Original lost—Copy in Court—If could be marked in evidence.

Where a document filed in Court has been impounded and sent to the Revenue Authorities for levying the necessary duty and penalty and such duty has been levied and collected but the document is lost, secondary evidence of the document could be let in by marking the copy of the document kept in Court. Such evidence cannot be shut out on the ground that the copy was taken anterior to the impounding of the document and the collection of the stamp duty and penalty.

T. R. Venkataraman, for Petitioner.

V. Srinivasa Ayyar and *K. Raman*, for Respondent.

R.M. ——— *Petition allowed.*

Rajamannar, C.J., and Venkatadri, J. Narasimhalu *v.* Ramanathan.
2nd December, 1960. C.R. P. No. 2168 of 1958.

Civil Procedure Code (V of 1908)—Order 34, rule 14—Prohibition against sale of mortgage property—Scope and object of.

The provisions of Order 34, rule 14 of the Civil Procedure Code are intended to prevent the mortgagor's equity of redemption being lost at the instance of a mortgagee. Hence where a mortgagee obtains a decree on a promissory note executed by the mortgagor for arrears of interest due on the mortgage the mortgagee cannot bring the mortgaged property to sale in execution of the decree as it will be a claim arising under the mortgage. A decree for rent arising out of a lease-back in favour of the mortgagor by the mortgagee in possession as part of the mortgage transaction is a claim arising under the mortgage within the meaning of Order 34, rule 14 of Civil Procedure Code. It is not necessary that the mortgagee should be able to institute a suit for sale in enforcement of the mortgage before the prohibition could apply.

A.I.R. 1956 Rajashthan 121, differed.

K. R. Venkatarama Sarma and *K. S. Venkatarama Ayyar*, for Petitioner.

K S. Desikan and *K. Raman*, for Respondent.

R.M. *Petition dismissed.*

Srinivasan, J. Navaneetham *v.* Gangiah.
2nd December, 1960. C.R.P. No. 2141 of 1959.

Civil Procedure Code (V of 1908), Order 22, rule 3 and Order 1, rule 10—Suit by benamidar—Real owner—When could come on record on the death of benamidar.

Where a suit is laid by an alleged benamidar claiming title in himself and the suit is not laid in any representative character, the purported true owner cannot come on record on the death of the alleged benamidar either under Order 1, rule 10 or Order 22, rule 3 of the Code of Civil Procedure. Such a procedure is possible only if the benamidar is suing in a representative capacity and not otherwise.

R. Krishna Ayyar, for Petitioner.

K. S. Ramamurthi and *K. Sarvabhauman*, for Respondent.

R.M. *Petition allowed.*

Jagadisan and Kailasam, JJ. Sivagaminatha *v.* Nataraja.
12th December, 1960. A. S. No. 112 of 1957.

Civil Procedure Code (V of 1908), section 13—Foreign judgment—When conclusive and binding.

A decree of a foreign Court, even if passed *ex parte* will be binding on the parties thereto and will be conclusive under section 13 of the Civil Procedure Code, if evidence was taken and the decision was given by the foreign Court on a consideration of the evidence. Where the decree of the foreign Court was passed as a matter of course as a result of the default of the defendant in furnishing security as directed, it is not one given on merits and will not be conclusive.

M. Natesan, for Appellant.

M. S. Venkatarama Ayyar and *V. Krishnan*, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan and Kailasam, JJ.
15th December, 1960.

Madras State Electricity Board *v.*
Commissioner of Labour.
W.A. No. 138 of 1960.

Madras Shops and Establishments Act (XXXVI of 1947), *sections* 2 (3) *and* 4—*Commercial establishment of —State Electricity Board—If a commercial establishment—If exempt from the operation of the Shops Act.*

In order to bring a person within the definition of a commercial establishment in section 2 (3) of the Madras Shops and Establishments Act, 1947, all that is necessary is that the person should be a member of the clerical staff employed in the clerical department of an industrial undertaking. It is not necessary that the whole department should be in one particular office.

The Madras State Electricity Board created under the provisions of the Madras Electricity Supply Act, is not a department, agent or servant of the Government nor is it a local authority. Hence the Board is not exempt from the provisions of the Madras Shops and Establishments Act under section 4 (1) (*c*) of the Act. In order to attract the exemption under section 4 (1) (*f*) of the Act the separate law contemplated therein should necessarily be a law which comprises all the details of the Madras Shops and Establishments Act and should in effect and substance cover the same field as covered by the Shops and Establishments Act. A separate law in relation to one or a few of the matters dealt with by the Shops Act cannot to that extent exclude the operation of the said Act.

P. R. Gokulakrishnan, for Appellant.

Messrs. Row and Reddy and the Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. — *Appeal dismissed.*

Kunhamed Kutti, J.
16th December, 1960.

Mettur Industries, Ltd. *v.* Velayutha Mudaliar.
C.R.P. Nos. 2103 and 2104 of 1959.

Employees' Provident Fund Act (XIX of 1952), *section* 10 *and Civil Procedure Code (V of* 1908), *section* 60 (k)—*Scope of immunity from attachment in execution of Provident Fund amounts.*

So long as an amount in the custody of a garnishee does not cease to have the character of Provident Fund, either by payment of the same to the employee or removing it from his credit in the accounts, the immunity against attachment in execution will continue by virtue of section 10 of the Employees' Provident Fund Act, 1952 and the provisions of section 60 (*k*) of the Civil Procedure Code.

Messrs. King and *Partridge*, for Petitioner.

K. Kumaraswami Pillai, for Respondent.

R.M. — *Petition allowed.*

Ananthanarayanan, J.
21st December, 1960.

E. V. K. Sampath, *In re.*
Crl. Rev. Case Nos. 1228 and 1243 of 1960.

Criminal Procedure Code (V of 1898), *section* 198-*B*—*If offends Article* 14 *of the Constitution of India* (1950).

Section 198-B of the Code of Criminal Procedure does not violate Article 14 of the Constitution of India.

V. P. Raman, for Petitioner in Crl. R.C. No. 1228 of 1960.

P. R. Gokulakrishnan and *S. Jayakumar*, for Petitioner in Crl. R.C. No. 1243 of 1960.

The Attorney-General of India, (*M. C. Setalwad*) The Advocate-General (*V. K. Thiruvenkatachari* and The Public Prosecutor, for the State.

R.M. — *Petition dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
17th January, 1961.

National Cement Mines Industries Ltd. *v.* The Commissioner of Income-tax, West Bengal, Calcutta.
C.A. No. 84 of 1958.

Income-tax Act (XI of 1922)*—Receipt of Revenue nature—Test—Construction of the eed of assignment.*

The question referred to the High Court of Calcutta was "Whether on a proper construction of the Deed of Assignment, dated 7th of May, 1935, and on the facts and in the circumstances of this case, the Tribunal was right in holding that the sum of Rs. 77,820 represented a receipt of a revenue nature in the hands of the Applicant and assessable as such?" On a construction of the Deed of Assignment

Held :—" The appellants had however not sold the entirety of the rights acquired by them from the Karanpura Company. The conveyance was subject to several restrictions and the appellants retained in part rights in the land conveyed. The transaction was substantially a commercial transaction for sharing the profits of the commercial activities of the Associated Cement, Ltd. The High Court was therefore right in holding that the transaction dated May 7, 1935, was a commercial transaction and the payment under clause (1) thereof at the rate of annas 13, per ton of cement sold was of the nature of income and not capital."

N. C. Chatterjee, Senior Advocate, for Appellant.

Hardayal Hardy, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
18th January, 1961.

Mohamed Noorulla *v.* The Commissioner of Income-tax, Madras.
C.As. Nos. 303 to 307 of 1960.

Income-tax Act (XI of 1922)*—" Single business "—Test—Co-heirs continuing business —If "association of persons."*

The question referred to the High Court of Madras was : "Whether the income-tax assessment of the business of 'Spade Clover Beedies' belonging to the estate of the deceased and carried on during the previous years 1943 to 1946 as an association of persons for the assessment years 1944-45 to 1947-48 is valid ?"

Held : " The question in the present case is as to what income was to be taxed. The income was the income of a business which was carried on as a single business by the consent of all the parties. (Co-heirs of a deceased owner). The mere fact that a suit was pending at the time for the administration of the estate of the deceased or for the separation of the shares of the co-heirs does not affect the incidence of taxation in this case, because, the business was carried on, as said above, as one business with unitary control and by the consent of the parties. The High Court was right in holding that the income was assessable as income of an association of persons.

R. Ganapathy Iyer, for Appellant (in all the appeals.).

K. N. Rajagopal Sastri, Senior Advocate, for Respondent (in all the appeals).

G.R. *Appeals dismissed.*

[SUPREME COURT.]

S. J. Imam, K. Subba Rao and *Raghubar Dayal, JJ.*
20th January, 1961.

Gopal Das Sindhi *v.* The State of Assam. Cr.A. No. 153 of 1959.

Criminal Procedure Code (V of 1898), *sections* 145, 439 *and* 561-*A*—*Penal Code* (*XLV of* 1860), *section* 448.

" It is true that after the amendment of the Criminal Procedure Code an offence under section 448 of the Penal Code is triable as summons case and committing Magistrate Court adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of section 537, Criminal Procedure Code, as no prejudice to the accused has been established in the case."

"A charge under section 448, Penal Code, had been framed by committing Magistrate and it will be for the Court trying the accused to decide whether any offence had been committed and whether the matter is merely in the nature of a civil dispute rather than an offence having been committed under the Penal Code."

Ram Lal Anand, Senior Advocate, for Appellants.

Naunit Lal, for Respondent No. 1.

Achhru Ram, Senior Advocate, for Respondent No. 2.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, J.*
20th January, 1961.

The Standard Vacuum Refining Co. of India *v.* Its Workmen. C.As. Nos. 416 of 1958 & 19 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 124 (4)—*Bonus.*

The Court held : " The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be over-estimated either. Having regard to the fact that the distribution of available surplus must inevitably depend in each case on its own facts this Court has generally refused to interfere with the decision of the Tribunal on the ground that any decision on the question of distribution should be left to its discretion. It is only where the award passed by the Tribunal appears to this Court to be wholly unreasonable and to be the result of the failure of the Tribunal to take into account the necessary relevant facts that the jurisdiction of this Court under Article 136 of the Constitution can be successfully invoked. In the present case the Tribunal has considered all the relevant factors and has come to the conclusion that five months' bonus would meet the ends of justice. We do not see any reason to interfere with this award."

M. C. Setalvad, Attorney-General for India, for Appellants (in C.A. No. 416 of 1958) and Respondent No. 1 (in C.A. No. 19 of 1959).

H. R. Gokhale, for Respondent No. 1 (in C.A. No. 416 of 1958 and Appellant in C.A. No. 19 of 1959.)

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
31st January, 1961.

Oriol Industries Ltd. *v.* Bombay Mercantile Bank. C.A. No. 221 of 1956.

Companies Act (I of 1956), *section* 89—*Negotiable instrument.*

Although the principle underlying section 89 of the Companies Act (1956) was salutary and afforded protection to a company, it could not be extended to a claim

by the company against a bank. " The said principle in terms is applicable only when a claim is made against a company on a negotiable instrument ; in other words, it is only in the matter of enforcement of negotiable instruments against a company that the principle comes into play. It is difficult to see how the principle enunciated in section 89 can be extended to a claim made by a company against a bank ".

S. N. Andley, for Appellant.

A. V. Viswanatha Sastri, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur and *J. C. Shah, JJ.*
31st January, 1961.

Union of India *v.* Musaddilal.
C.A. No. 313 of 1956.

Railways Act (IX of 1890), *section* 77—*Scope.*

Section 77 of the Railways Act " prescribes a condition precedent to the maintainablity of a claim for compensation for goods lost, destroyed or deteriorated while in the custody of the railway administration. The notice prescribed was not served by the respondent upon the railway administration within six months from the date on which the goods were delivered for carriage and *prima facie* the suit would be barred for non-compliance of a statutory condition precedent".

R. Ganapathy Iyer, for Appellant.

K. P. Gupta, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
1st February, 1961.

Burmah Shell Refineries Ltd. *v.* Their Workmen.
C.A. No. 250 of 1959.

Industrial Disputes Act (XV of 1947)—*Bonus—Award for clerical staff.*

We find nothing that would justify us in interfering with the conclusion of the Tribunal that the clerical staff should be awarded bonus at the same rate as the operatives."

M. C. Setalvad, Attorney-General of India, for Appellant.

Janardhan Sharma, for Respondent.

G.R. ——— *Appeal dismissed.*

Jagadisan, J.
1st November, 1960.

Thimmakkal *v.* Kamakshi Ammal.
S.A. No. 795 of 1958.

Transfer of Property Act (IV of 1882), *section* 56—*Marshalling—Scope of.*

Where the owner of two or more properties mortgaged sells one of them to another, the purchaser has under section 56 of the Transfer of Property Act, the statutory right to insist on the mortgage debt being satisfied out of the property or properties not sold to him. But this right of the purchaser cannot prejudice the rights of the mortgagee or persons claiming under him. Nor could this right be enforced if there is a contract to the contrary. Section 56 does not operate to curtail or restrict the rights of the mortgagee to recover the mortgage amount from all or any of the items mortgaged in any manner he likes.

T. V. Balakrishnan and *K. R. Natarajan*, for Appellant.

V. C. Viraraghavan, for Respondent.

R.M. ——— *Appeal allowed.*

Rajamannar, C.J. and *Venkatadri, J.*
18th November, 1960.

Mohammed Abbu Bakker *v.*
Zamindar of Ettiyapuram.
C.R.P. No. 1038 of 1957.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *as amended by Act IV of* 1956—*Section* 2 (a) *and* (ee)—' *Cultivating tenant*'—*Meaning of—Contributing physical labour—What amounts to.*

In order to fall within the definition of cultivating tenant a person should carry on personal cultivation which again requires that he should contribute physica- labour. Use of physical labour connotes the idea of physical strain—the use of muscles and sinews—and implies a distinction from mental or intellectual work. Mere supervision of the work of ccultivation or maintaining of account or disbursements of wages will not be such contribution of physical labour as to attract the definition.

(1958) 1 M.L.J. 272 held too wide. English decisions referred.

S. Mohankumaramangalam and *S. Gopalaratnam*, for Petitioner.

R.M. *Petition dismissed.*

Ramachandra Ayyar, J.
24th November, 1960.

Sri Dandapani Power Looms *v.*
C.T.O., Coimbatore.
W.P. No. 809 of 1958.

Madras General Sales-ax Act (IX of 1939), *section* 3 (1) (b), *as amended by Acts XX of* 1954 *and III of* 1956—*Scope and effect—Additional tax on power loom cloth—Liability.*

Under the scheme of sales-tax levied prior to the Amending Act (III of 1956) power loom cloth was not brought within the scope of the additional tax. When section 2 (*b*) of Act XX of 1954 enacted that mill cloth would be liable to additional tax, it did not include power loom cloth. Considered in the context of Act III of 1956, it is clear that prior to the amendment power loom cloth, as distinguished from mill cloth, did not attract the additional tax imposed by Madras Act XX 1954.

M. K. Nambiyar and *K. K. Venugopal*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Rule absolute.*

Rajagopalan and *Srinivasan, JJ.*
24th November, 1960.

M/s. Devi Films (Private) Ltd. *v.*
D.C.T.O., Madras.
T.C. No. 120 of 1958.

Madras General Sales-tax Act (IX of 1939)—*Turnover and Assessment Rules, Rule* 5 (1) (b)—*Hire purchase agreement—Goods returned and liability for unpaid instalments terminated—Allowance permissible.*

In cases of transactions of sale in the form of hire purchase agreement where the goods sold are returned and the unpaid instalments cease to be payable the seller is entitled to claim the total of unpaid instalments and only such instalments as an allowance under rule 5 (1) (*b*) of the Turnover and Assessment Rules.

S. Swaminathan and *K. Ramagopal*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. *Petition allowed.*

Rajamannar, C.J. and Venkatadri, J. Meenakshi *v.* Muthukrihsna.
25th November, 1960. L.P.A. 40 of 1958.

Practice—Courts granting relief—Events subsequesnt to the suit—When could be taken into consideration.

There could be no inflexible rule that in disposing of matters coming before it Courts should never take or should always take into consideration the subsequent events that have come into being after the institution of the proceedings and which were not available to it at any time earlier. It must depend upon the peculiar circumstances of each case. Where fresh evidence is required to substantiate the subsequent events and parties are not agreed on the basic allegations, it is not proper for a Court to take into account the subsequent events and mould the relief in accordance with them.

M. S. Venkatarama Ayyar and *K. Kalyanasundaram*, for Appellant.

P. S. Balakrishna Ayyar, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Ayyar, J. Apparswami *v.*
28th November, 1960. Sri Parvathavardhini, etc., Temple.
C.R.P. No. 1404 of 1959.

Madras Court-fees and Suits Valuation Act (XIV of 1955), section 8—Claim for payment of costs of improvement as a condition of surrendering possession—If a counter-claim.

A claim by a defendant in a suit for possession of property, that he should be paid the cost of improvements effected by him as a condition of the decree for possession, is neither a claim for set off nor one by way of counter-claim and section 8 of the Madras Court-fees and Suits Valuation Act cannot apply to such claims.

P. V. Subramaniam, for Petitioner.

K. Raman, for Respondent.

The Government Pleader (*A. Alagiriswami*), for the State.

R.M. *Petition allowed.*

Ramachandra Ayyar, J. Chinnadurai *v.*
1st December, 1960. Court of Wards, Madras.
C.R.P. No. 1055 of 1960.

Madras Court-fees and Suits Valuation Act (XIV of 1955), sections 39, 48 and 50—Administration Suit—Nature of relief claimed.

Where a plaint claims reliefs that the Court may take charge of the suit property and ascertain the shares of the contending parties and distribute the same, it is an administration suit attracting Court-fee under section 39 of the Court-fees Act and Court-fee has got to be levied after the shares are ascertained and before the decree is passed. Neither section 48 nor section 50 of the Court-fees Act could apply to such cases.

P. S. Sarangapani Ayyangar, for Petitioner.

The Government Pleader, for Respondent.

R.M. *Orders accordingly.*

Rajamannar, C.J., and Veeraswami, J. Vanguard Fire and General Insurance Co., Ltd. *v.*
Annamalai & Co., Ltd.
2nd December, 1960. C.C.C.A. No. 68 of 1957.

Insurance Act (IV of 1938), section 31-A—Employing as manager or officer any person whose remuneration takes the form of commission—Employment—What is—Contract of employment in contravention—Effect.

A contract to employ does not necessarily mean to find actual employment nor does it imply that the person employed has to follow a daily routine of work. Even

a person who is retained to do any kind of service when the need or occasion for such service arises, would be a person employed within the meaning of section 31-A of the Insurance Act and such employment cannot be on the basis of commision or bonus. A contract of employment contrary to section 31-A of the Act will be unenforceable where even a part of the consideration has become rendered unlawful by section 31-A of the Act.

R. Narasimhachari and *N. Varadarajan* for Appellant.

T. K. Subramania Pillai, Chockalingam and *S. Sethurathnam* for Respondents.

R.M. —— *Appeal allowed.*

Ananthanarayanan, J.
7th December, 1960.

Public Prosecutor *v.* Modi.
Crl. Rev. Cases Nos. 842 and 843 of 1959.

Sea Customs Act (VIII of 1878), *sections* 167 (8-*l*) *and* 178-*A* (2)—*Scope of.*

Section 167 (8-*l*) of the Sea Customs Act is an omnibus provision and before a person could be held guilty of an offence under the section the prosecution must prove by dependable evidence that the goods were smuggled ones. The presumption under section 178-A of the Act will be attracted only in cases where the goods seized fall within the specified class. Merely because a person is in possession of goods, not falling under the category specified in section 178-A, and is unable to account satisfactorily for its acquisition, it cannot be said that an offence under section 167 (8-*l*) of the Act is committed.

R. M. Seshadri and *B. T. Sundararajan*, for Petitioner.

The Public Prosecutor, for the State.

R.M. *Conviction set aside.*

Veeraswami, J.
8th December, 1960.

Sankarasubbu *v.* Parvati Ammal.
S.A. No. 292 of 1959.

Co-owners—Nature of ownership—Building put up by one co-owner on the joint land—When could be directed to be demolished.

Injunction—Co-owner putting superstructure on joint land—Mandatory injunction to demolish—When could issue.

In the case of co-owners no one can claim an exclusive right to any particular part of the property owned in common and as such an encroachment by a co-owner upon a portion of the common property cannot be equated to trespass. Unless such an encroachment is shown to have been objected to by the other co-owners at the earliest time and is also shown to cause material and substantial injury to the other co-owners which cannot be otherwise compensated, a mandatory injunction to demolish the building will not be issued. A purchaser from a complaining co-owner cannot claim any better right.

R. Ramamurthi Ayyar and *M. D. K. Vallinayakam*, for Appellant.

P. S. Chandrasekara Ayyar and *P. S. Ramachandran*, for Respondent.

R.M. —— *Appeal allowed.*

Ramachandra Iyer and
Kunhamed Kutti, JJ.
14th December, 1960.

Bibijan *v.* Collector of North Arcot Dt.
A.A.O. No. 325 of 1958.

Income-tax Act (XI of 1922), *section* 46 (2)—*Certificate under—If could be executed by a civil Court as a decree.*

A certificate of the Income-tax Officer issued under section 46 (2) of the Income-tax Act to the Collector is not a decree of a civil Court and the Collector has

no power to apply for execution of the same to the civil Court. The fact that the Collector can recover the amount by adopting the process of an execution in a civil Court does not mean that the certificate is as such executable by a civil Court.

M. Ramachandran and *T. V. Balakrishnan*, for Appellant.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. ——— *Appeal allowed.*

Kunhammed Kutti, J. Alab Bai *v.* Ramanujachari.
16th December, 1960. C.R.P. No. 1747 of 1959.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 33 (2)—*Applicability.*

Two conditions are necessary before a defendant, who claims to be a prior mortgagee, can be called upon to pay Court-fee on his claim under section 33 (2) of the Madras Court-fees and Suits Valuation Act. The first is that he should pray in his written statement that the amount due on his mortgage or charge be determined. The second is that there shoud be a direction in the decree for the payment of such amount to him.

R. Narasimhachari and *N. Varadarajan*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for the State.

N. C. Raghavachari and *N. S. Varadachari*, for Respondents.

R.M. ——— *Petition allowed.*

Rajamannar, C.J., and *Venkatadri, J.* Madurai Municipality *v.* State of Madras.
16th December, 1960. Appeal No. 73 of 1957.

Madras District Municipalities Act (*V of* 1920), *section* 76-*A*(*b*)—'*Municipal Council concerned*'—*Meaning of.*

The expression 'municipal council concerned' which occurs in clause (*b*) of section 76-A of the Madras District Muncipalities Act is practically the same as the expression 'the municipality in which he is employed'. In order to enable the Government to recover from a municipality the salary of a health officer or engineer appointed under section 76-A of the Act, the officer concerned should be in the service of the municipality. In cases where such an officer is suspended and later reinstated, the period of absence being treated as leave or duty, the municipality liable to pay the allowances, etc., of the officer, will be the municipality which he was serving on the date of suspension.

M. K. Nambiyar and *K. K. Venugopal* for Appellant.

The Government Pleader (*A. Alagiriswami*), *R. Desikan*, *K. S. Desikan* and *K. Raman* for Respondents.

R.M. ——— *Appeal allowed.*

Kunhamed Kutti, J. Ponnuswami *v.* Venkataraman.
21st December, 1960. C.R.P. No. 1795 of 1959.

Civil Procedure Code (*V of* 1908), *Order* 33, *rule* 1, *Explanation* (*a*) '*Sufficient means*'—*What is.*

The words 'sufficient means to enable him to pay the Court-fee' in rule 1 of Order 33 of Civil Procedure Code is not equivalent to possession of sufficient properties. The possession contemplated is not possession of the requisite property but the means, *i.e.*, the capacity to raise the money necessary for payment of Court-fee. In deciding the question of means it is for the Court to decide, on the facts of each case, whether it should take into consideration or not the subject-matter in dispute.

P. Kothandaraman, for Petitioner.

R. Ramamurthi Ayyar, *C. S. Swaminathan* and *R. Shunmugam*, for Respondent.

R.M. ——— *Petition allowed.*

Ramakrishnan, J. Sivathanu *v.* Valliamma.
23rd December, 1960. A. No. 305 of 1957.

Transfer of Property Act (IV of 1882)—Former Travancore State areas—Principle of subrogation—Extent of application—Limitation.

In areas such as the former Travancore State where the Transfer of Property Act was inapplicable, a co-mortgagor redeeming a prior usufructuary mortgage is not subrogated to the rights of the prior mortgagee in the sense that the prior mortgage is kept alive and treated as subsisting for the purpose of construing the period of limitation when the non-redeeming co-mortgagor sues for partition and separate possession of his share of the mortgaged property. It will only be a case of working out the equities between the parties to the limited extent necessary.

The decision of the former Travancore or Travancore-Cochin High Courts have no binding effect on the Madras High Court and are at best considered to have a persuasive value.

T. M. Krishnaswami Ayyar and *A. Balasubramanian,* for Appellant.

S. Padmanabhan, for Respondent.

R.M. *Appeal allowed in part.*

Ananthanarayanan, J. Ratnamala, *In re.*
11th January, 1961. Crl. Appeal No. 207 of 1960.

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956), section 2 (a) and (3)—Brothel—Meaning of—Object of the Legislature.

The object of the Suppression of Immoral Traffic in Women and Girls Act, 1956, is to prevent commercialised vice and not to penalise an individual prostitute. The idea is not to render prostitution *per se* a criminal offence.

The definition of 'Brothel' in section 2 (*a*) of the Act implies that where a single woman practises prostitution for her own livelihood, without any other prostitute or other persons involved in the maintenance of such premises, her residence will not amount to a brothel. An individual prostitute residing in a place cannot be said to be 'keeping a brothel' so as to attract the penalty under the Act.

(Use of traps and mode of raid—Caution in procedure indicated).

The Public Prosecutor, for the State.

R.M. *Orders accordingly.*

Ramakrishnan, J. Nallayee, *In re.*
31st January, 1961. Crl. Appeal No. 624 of 1959.

Criminal Procedure Code (V of 1898), section 271 (2)—Conviction based on plea of guilty—Propriety.

Under section 271 (2) of the Criminal Procedure Code the Court is no doubt empowered to record the plea of an accused and convict him if the accused pleads guilty. But the conviction need not necessarily follow the plea of guilty. The Court has discretion to accept the plea or proceed to take evidence notwithstanding the plea. Courts will be exercising a wise discretion in not accepting the plea of an accused and proceeding with the recording of evidence.

The Public Prosecutor, for the State.

R.M. *Sentence modified.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
19th January, 1961.

The Union of India *v.* The Maharaja Kishangarh Mills, Ltd., In liquidation.
C.A. No. 252 of 1956.

Central Excise and Salt Act (I of 1944)*—Section* 11 *of the Finance Act,* 1950*—Rajasthan Excise Duty Ordinance (XXV of* 1949)*—Articles* 278, 279 *and* 295 *of the Constitution.*

It is true that Article 277 has saved, for the time being, until Parliament made a provision to the contrary, the power of the State of Rajasthan to l vy such a duty, but that is only a saving provision, in terms subject to the provisions of Article 278. Thus, the combined operation of Articles 277 and 278 read with the agreement vest the power of levy and collection of the duty in the Union of India. It is only in the absence of an agreement like the one we have in this case that the Rajasthan Government could continue to levy and collect the duty in question. The agreement between the two Governments completely displaced the operation of Article 277 in regard *inter alia* to the levy of this duty so far as the State of Rajasthan is concerned. It is clear, therefore, that the High Court was in error in holding that Article 278 was any answer to the claim of the Government of India and should override the provisions of Article 278 read with the agreement. On a proper construction of these provisions, in our opinion, the result is just to the contrary. In this view of the matter, it is not necessary to consiuer the other arguments advanced on behalf of the appellants, whether Article 295 should prevail over Article 277.

Gopal Singh, for Appellant.

S. N. Andley, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
20th January, 1961.

Bhagwati Saran *v.* The State of U. P.
Cr. A. No. 16 of 1959.

Iron and Steel Control Order (1941), *section* 11-*B—Articles* 14 *and* 19 *of the Constitution.*

Following their earlier decision in (1960)2 S.C.R. 627, the Court held that the constitutionality of section 11-B of the Iron and Steel Control Order has been the subject of elaborate consideration by this Court in the above mentioned case and is therefore, no longer open to argument.

"We consider that there is no material on the basis of which an argument could be sustained that the special conditions to which learned counsel adverted contained any element of unfair or irrational discrimination to attract Article 14 of the Constitution.

R. V. S. Mani, for Appellant.

G. C. Mathur and *C. P. Lal,* for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

A. K. Sarkar and N. Rajagopala Ayyangar, JJ.
25th January, 1961.

The State of Madhya Pradesh *v.*
Ahmadulla,
Cr.A. No. 120 of 1960.

Penal Code (XLV of 1860), *sections* 302 *and* 84—*Scope—Crime by a person of an unsound mind.*

"We consider that there was no basis in the evidence before the Court for the finding by the Sessions Judge that at the crucial moment when the accused cut the throat of his mother in law and severed her head, he was from unsoundness of mind incapable of knowing that what he was doing was wrong. Even the evidence of the father does not support such a finding. The crime was not one committed in a sudden mood of insanity but one that was preceded by careful planning and exhibiting cool calculation in execution and directed against a person who was considered to be the enemy.

I. N. Shroof, for Appellant.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
27th January, 1961.

T. V. R. Subbu Chetty's Family Charities *v.*
M. Raghava Mudaliar.
C.A. No. 204 of 1956.

Hindu Law—Widow's power to alienate—Reversioner's right—Legal necessity.

If a presumptive reversioner is a party to an arrangement which may properly be called a family arrangement and takes benefit under it, he would be precluded from disputing the validity of the said arrangement when reversion falls open and he becomes the actual reversioner. The doctrine of ratification may also be invoked against a presumptive reversioner who, though not a party to the transaction, subsequently ratifies it with full knowledge of his rights by assenting to it and taking benefit under it. It is, however, clear that mere receipt of benefit under an arrangement by which a Hindu widow alienates the property of her deceased husband would not preclude a presumptive reversioner from disputing the validity of the said alienation when he becomes the actual reversioner. It must always be a question of fact as to whether the conduct of the said reversioner on which the plea of ratification is based does in law amount to ratification properly so-called.

Therefore, in our opinion, the conclusion is inescapable that the impugned transfer is not justified by legal necessity.

R. Keshva Aiyangar, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent No. 1.

B. K. B. Naidu, Advocate, for Respondent No. 6.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur and J. C. Shah, JJ.
1st February, 1961.

V. R. Subramanyam *v.*
B. Thayappa and others,
C.As. Nos. 321 and 322 of 1956.

Contract Act (IX of 1872), *section* 70—*Compensation*—Quantum meruit.

"If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is en-

titled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him : even if he failed to prove an express agreement in that behalf, the Court may still award him compensation under section 70 of the Contract Act. By awarding a decree for compensation under the Statute and not under the oral contract pleaded, there was in the circumstances of this case no substantial departure from the claim made by the respondent.

S. K. Venkataranga Aiyangar, for Appellant. (In both the Appeals).

B. K. B. Naidu, for Respondents.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
2nd February, 1961.

Satinder Singh & Sardanni Gurdial Kaur *v.* Umrao Singh and the State of Punjab.
C.As. Nos. 396 to 399 and 419 to 421 of 1959 and 152 of 1960.

Land Acquisition Act (I of 1894), *sections* 4 *and* 32—*Punjab Requisitioning and Acquisition of Immoveable Property Act (XI of* 1953).

The Scheme of section 32 of the Land Acquisition Act is that in cases to which the said section applies the Court shall order the compensation amount to be invested in the purchase of other lands which would be held under the right, title and conditions of ownership as the land in respect of which the compensation amount has been deposited. That is the plain effect of section 32 (1) (*a*). Section 32 (1) (*b*) comes into operation if such purchase cannot be effected forthwith and it has to remain in operation until such purchase is made. In other words, if the compensation amount cannot be immediately invested in the purchase of other lands, as an interim measure the said amount may be invested in the prescribed securities and income thereof distributed to those who were entitled to it. Therefore, even if the principle underlying section 32 is extended to the present case on equitable considerations it would not justify the appellant's claim that the compensation amount should itself be treated as corresponding to the corpus of lands acquired and should be permanently invested in suitable securities leaving to the parties concerned the right to enjoy only its income. Such a course is plainly inconsistent with the principle recognised by section 32 (1) (*a*).

M. C. Setalvad, Attorney-General for India, for Appellant (In C.As. Nos. 396 to 398 of 1959) and Respondent No. 2 (In C.As. Nos. 419-421 of 1959 and 152 of 1960.

A. V. Viswanatha Sastri, Senior Advocate, for Appellant (In C. As. Nos. 419 to 421 of 1959 and Respondent No. 1 (In C. As. Nos. 396 to 398 of 1959) and Respondent No. 3 (In C.As. No. 152 of 1960).

G. C. Mathur, for Appellant (In C.A. No. 152 of 1960.)

Gopal Singh, for Respondent No. 2 (In C. As. Nos. 396 to 398 of 1959) and Respondent No. 1 (In C.As. Nos. 419 to 421 of 1959 and 152 of 1960).

G.R. *High Court's decree modified.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K.N Wanchoo, JJ.
3rd February, 1961.

Commissioner of Income-Tax, Bombay City *v.* Dharamdas Hargovandas.
C.A. No. 240 of 1955.

Income-tax Act (*XI of* 1922), *section* 4 (1) (*b*) (iii) *and section* 60 (2).

The question referred to the High Court was " Whether, in any event, on the facts found by the Tribunal, there was any remittance by the petitioner to Bombay within the meaning of and assessable under section 4 (1) (*b*) (iii) of the Income-tax Act". The relevant words of clause (*b*) (iii) with which we are concerned are these: " are brought into or received in the taxable territories by him during such year ". We have held that this is a case of receipt by the respondent in the taxable territories; it is therefore unnecessary to consider in the present case whether the words " brought into the taxable territories by him " means that the income must be brought in by the person himself as held by the High Court. This being a case of receipt, there can be no doubt that income, etc., was received by the respondent and the indirect method employed in this case for receiving the money would nonetheless make it a receipt by the respondent himself. We are therefore of opinion that the respondent is liable to pay income-tax on the sum of Rs. 50,000 under section 4 (1) (*b*) (iii) of the Act and the question framed therefore must be answered in the affirmative. The result is that the appeal is allowed and the order of the High Court set aside.

Hardayal Hardy, for Appellant.

G. S. Pathak, Senior Advocate, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
3rd February, 1961.

Ranchhoddas Atmaram *v.* Union of India and T. K. Gupta *v.* The State of Bombay.
Petition No. 300 of 1960 and Cr. Appeal No. 107 of 1958.

Sea Customs Act (*VIII of* 1878), *sections* 19 *and* 167—*Articles* 14, 20 (2) *of the Constitution of India—Section* 23 *of the Foreign Exchange Act,* 1947—*Affirmative and negative sentences distinctive.*

" We have earlier held that either of the two penalties provid ed may be chosen by the authorities concerned as they consi er fit.

" The learned counsel then said that if both the alternatives were available to the authorities concerned to choose from, then the provision would give them a very arbitrary discretion which, whether it offended Article 14 or not, there is no reason to think was intended by the Legislature. We do not think that this argument is of force. Each of the alternative penalties provided, has a limit attached to it. Therefore the discretion is neither unlimited nor arbitrary. It may be that three times the value may amount to an enormous sum but that will be so only when the value of the goods with which the offence is concerned, is high. If goods of high value are the subject-matter of the offence, then there is no reason for saying that the provision for imposing a penalty of three times that value, is not intended by the Legislature.

It would indeed be strange if a statute like the Sea Customs Act, on the proper working of which the finances and commerce of the country largely depend, considered a pecuniary penalty of Rs. 1,000 enough for a breach of any of its provisions. We feel no doubt that the Act did not intend this.

Porus A. Mehta, for Petitioners.

C. K. Daphtary, Solicitor-General of India, for Respondents (In Petition No. 300 of 1960.

Porus A. Mehta, for Intervener.

N. C. Chatterjee, Senior Adocate, for Appellant.

H. R. Khanna, for Respondents (In Cr.A. No. 107 of 1958).

G.R. *Petition and Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
23rd February, 1961.

Raje Anandrao *v.* Shamrao.
C.A. No. 370 of 1956.

Civil Procedure Code (*V of* 1908), *section* 92—*Scope—Modification of a scheme—Procedure.*

It is not necessary to hold that a suit under section 92 in which a scheme is framed providing such a clause is pending for ever. The scheme deals with the administration of the trust and for the purposes of the scheme it would not be wrong or improper to treat a suit under section 92 as analogous to an administraton suit. On that view it would in our opinion be just and convenient to provide for a clause in the scheme which is framed for the administration of the trust to allow for its modification by an application. We therefore accept the view of the Bombay, Calcutta, Allahabad and Patna High Courts in this matter and hold that it is open in a suit under section 92 where a scheme is to be settled to provide int he scheme for modifying it as and when necessity arises, by inserting a clanse to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme without the necessity of a suit under section 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of section 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is *ultra vires* is incorrect. It was therefore open to the District Judge in the present case to modify the scheme.

A. V. V. Shastri, *Shankar Anand* and *Ganpat Rai*, for Appellant.

W. R. Barlingey and *A. G. Ratna Parkhi*, for Respondents.

G.R. *Appeal allowed.*

Jagadisan and Kailasam, JJ.
13th December, 1960.

Srilasri Subramania Desikar, Pandara Sannadhi *v.* State of Madras.
Appeal No. 294 of 1957.

Madras Estates Land (*Reduction of Rent*) *Act* (*XXX of* 1947)—*and Madras Estates Supplementary Act* (*XXIX of* 1956), *section* 3-*A*—*If restrospective in operation.*

Section 3-A of the Madras Estates Land (Reduction of Rent) Act, 1947, introduced by the Amending Act XXIX of 1956 cannot affect suits pending in civil Courts on the date when the Amending Act came into force. The Amending Act does not either expressly or by intendment make the amendment retrospective in operation. Section 3-A of the Act could not therefore deprive the jurisdiction of

c vil Courts to decide suits instituted and pending before them before the date of the introduction of the said section.

(Case-law reviewed—Scheme of the Act analysed).

S. Nagaraja Ayyar, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *R. G. Rajan*, for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer and Kunhamed Kutti, JJ.
13th December, 1960.

Sangavi *v.* Sha Devsee Moolchand.
A.A.O. Nos. 219 and 220 of 1958.

Civil Procedure Code (*V of* 1908), *section* 20—*Jurisdiction—Parties agreeing to vest jurisdic ion in one of the two competent Courts.*

Practice—Contract between partie agreeing to vest jurisdiction in one of two competent Courts—Scope of.

It is no doubt true that where there are two competent Courts which can try and deal with the subject-matter of a claim on a contract it would be open to the parties to agree that the disputes arising under the contract should be adjudicated by one of such Courts. It is equally well settled that contracts which attempt to oust the jurisdiction of one of the Courts, which under the law can take cognizance of the suit, will have to be stricitly construed.

Where the clause in a contract stipulated that all proceedings in respect of it shall be taken in a Court of original jurisdiction in Tirupur and it so happens that only a District Munsif's Court exists at that place with limited pecuniary jurisdiction, a suit claiming an amount beyond the pecuniary jurisdiction of the said Court will be outside the purview of the clause. Such a clause cannot be interpreted to mean any Court having original jurisdiction over Tirupur, such as the Sub-Court at Coimbatore. The general rule of construction of a written contract is that its language should be understood in its ordinary and natural meaning even though such a construction may not carry out the purpose, which the parties may be supposed to have intended.

49 C.W.N. 123; (1954) 1 M.L.J. 434, referred.

It will not however be open to the parties by agreement to vest a jurisdiction in a Court which it did not possess and deprive an only Court of the jurisdiction which it has.

V. C. Gopalaratnam, V. Devarajan and *V. S. Rangachari*, for Appellant.

A. Balasubramaniam and *K. N. Venkataramani*, for Respondent.

R.M. *Appeal allowed.*

Ramakrishnan, J.
23rd December, 1960.

Abraham *v.* Varampattu Asirvadham.
Appeal No. 336 of 1957.

Civil Procedure Code (*V of* 1908), *section* 95—*Claim for compensation under.*

Though no special provision is made for the procedure to be followed in dealing with an application for compensation under section 95 of the Civil Procedure Code, still it is clear that the Court cannot provide for compensation under section 95 as part of the decree in the suit itself. The claim for compensation is collateral to the suit leading to an order independent of the decree in the suit, which order is in turn appealable. Hence there should be at least an application before the Court in that

regard, either independently or by way of claim in a counter, a formal notice whereof should be given to the other side and orders should be passed thereon independently.

J. S. Athanasius and *R. G. Rajan*, for Appellant.

V. Ganapatisubramania Ayyar, S. Mohan Kumaramangalam, K. V. Sankaran and *S. Mahadevan*, for Respondents.

R.M. *Appeal allowed in part.*

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Rajagopalan and Srinivasan, JJ.
3rd January, 1961.

Raman Chettiar *v.* Commissioner of Income-tax, Madras.
R.C. No. 114 of 1956.

Income-tax Act (XI of 1922) *sections* 34 *and* 22—*Effect —Scope of—Procedure under —When could be invoked.*

The First proviso to section 34 (1) of the Income-tax Act requires that no notice should issue under the section unless the Officer has recorded his reasons for doing so and the Commissioner is satisfied with such reasons recorded. A notice issued without complying with the requirements of the Proviso will be invalid and subsequent proceedings taken in pursuance of such a notice cannot be valid either. Where an assessee has filed a return in pursuance of section 22 (1) or (2) of the Act, however, belated it may be, the Income-tax Officer cannot ignore the return and proceed otherwise either under section 23 (3) or 34 (1) (*a*). A return submitted in response to an invalid notice under section 34 cannot be related to that notice and could only be treated as a valid return filed by the assessee under section 22 (3) of the Act and it is not open to the Department to ignore the return and issue a fresh notice under section 34 (1) (*a*) of the Act.

S. Swaminadhan and *K. Ramagopal*, for Petitioner.

C. S. Rama Rao Sahib and *S. Ranganathan*, for Respondent.

R.M. *Answered accordingly.*

Jagadisan J
6th January, 1961.

Sivaji Rao *v.* Akilandeshwari Ammal.
S.A. Nos. 37 and 38 of 1959.

Landlord and tenant—Darkhast grants—Tenant if could question validity of grant—Jurisdiction of Court.

It is well settled law that procedural irregularities, if any, occurring in the course of proceedings, for grant of Government lands cannot vitiate the grant and it is beyond the competence of civil Courts to set aside the grant or refuse to recognise its validity. So long as the authorities act within the scope of their powers conferred on them by the rules, it is not upen to the civil Courts to discuss the sufficiency or otherwise of the ground or the regularity of the procedure adopted by them.

T. R. Srinivasan and *T. V. Sadagopachari*, for Appellants.

A. K. Sriraman and *A. Balasubramaniam*, for Respondents.

R.M. *Appeal allowed.*

Ananthanarayanan and Veeraswami, JJ.
23rd January, 1961.

In re Palaniappan.
Crl. Appeal No. 246 of 1960.

Criminal Rules of Practice—Rule 166—*Counsel engaged by State for the defence—Accused repudiating the counsel and desiring to cross examine the witnesses himself—Duty of Court.*

It is true that the provisions of Rule 166 of the Criminal Rules of Practice are mandatory and should be complied with in all cases where applicable. But the

rule does not invest the Court with any authority to permit a counsel to represent the accused even after an express repudiation of that representation by the accused.

Per Veeraswami, J.—"Rule 166 of the Criminal Rules of Practice seeks to safeguard the right of the accused. Where the requisites of that rule are satisfied clearly it is the duty of the Court to appoint a counsel. But that rule in no way affects the right of the accused to defend himself. The fact that an accused is represented by counsel does not in any way stand in the way of the accused cross-examining the witnesses".

G. Gopalaswami, for Appellant.

The Public Prosecutor, for the State.

R.M. *Appeal allowed.*

Kailasam, J.
2nd February, 1961.

Ramadoss *v.* Palanichami.
C.R.P. Nos. 1197 and 2510 of 1960.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 39 (4) *and section* 18—*Period of one month—How computed.*

The period of 30 days prescribed under section 39 (4) of the Madras Hindu Religious and Charitable Endowments Act, 1951 for filing an application to the Court to set aside the order of the Commissioner is to be computed from the date of the receipt of the order by the aggrieved party, *viz.*, hereditary trustee. The section does not contemplate excluding the time taken for disposing of a revision petition filed under section 18 of the Act.

The Advocate-General (*V. K. Tiruvenkatachari*), *T. P. Gopalakrishnan* and *A. Narayanaswami,* for Petitioner.

V. C. Srikumar and The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. *Petition allowed.*

Rajagopalan and Srinivasan, JJ.
7th February, 1961.

Santhosha Nadar *v.* First Assistant Income-tax Officer, Tuticorin.
W.P. No. 1011 of 1958.

Income-tax Act (*XI of* 1922), *section* 46 (2) *and Madras Revenue Recovery Act* (*II of* 1864)—*Certificate issued for a particular sum—Subsequent payment and reduction of amount due—Duty of Collector to bring the properties of assessee for sale for the exact amount due.*

It is no doubt true that when once a certificate is issued under section 46 (2) of the Income-tax Act for a specific amount as arrears of tax, the fact that subsequently the arrears were reduced by payment will not vitiate the certificate itself and the Collector has jurisdiction to recover the balance on the basis of the original certificate itself. But under the Revenue Recovery Act the Collector has no jurisdiction to bring any property to sale to recover a sum larger than what is legally due on the date of notice of attachment. Hence where a notice of attachment mentioned a larger amount than what is actually due on that date a sale held in pursuance of it will be vitiated.

M. R. M. Abdul Kareem and *T. Martin,* for Petitioner.

C. S. Ramarao Sahib, for Respondent.

R.M. *Order accordingly.*

Kailasam, J.
22nd November, 1960.

Godavari Bai *v.* Seshadrinathan.
C.R.P. No. 1208 of 1959.

Evidence Act (*I of* 1872), *section* 34—*Scope of.*

It is no doubt true that entries in books of account regularly kept in the course of business are relevant under section 34 of the Evidence Act. But as provided in the illustration to the section itself the entries by themselves are not sufficient to charge any person with liability for the debt unless there is evidence to prove the debt.

K. Parasaran, for Petitioner.

T. R. Ramachandran, for Respondent.

R.M.

Petition allowed.

Jagadisan and Kailasam, JJ.
12th December, 1960.

Arumugha Chettiar *v.*
Kuppuswami Chettiar,
Appeal No. 8 of 1957.

Deeds—Construction—Release deed—If could be construed as conveyance.

Even though a deed may be styled as a ' release deed ' if the intention to transfer any right of the executant in the subject-matter of the deed is clear, the document could be treated as a conveyance.

T. K. Subramania Pillai, for Appellant.

T. R. Ramachandran and *V. S. Ramakrishnan*, for Respondents.

R.M.

Appeal allowed.

Veeraswami, J.
12th December, 1960.

Lakshmanan Chettiar *v.* Mamdan Chettiar.
S.A. No. 219 of 1959.

Limitation Act (*IX of* 1908), *Article* 116—*Suit for compensation for breach of warranty of title—Starting point for limitation.*

In cases where immoveable property is purchased without taking physical possession from the vendor and the vendee has to institute a suit against third parties for recovering physical possession, the breach of covenant as to title as between the vendor and vendee could be reasonably said to occur only when it is found, as a result of the suit by the vendee against the third parties, in possession, that the vendor has no title. Hence for a vendee's suit for compensation against his vendor for breach of warranty of title and possession the starting point for limitation under Article 116 of the Limitation Act will be the date of the dismissal of his suit against the third party.

K. S. Ramamoorthy and *T. R. Mani*, for Appellant.

K. S. Champakesa Iyengar and *K. C. Srinivasan*, for Respondents.

R.M.

Appeal allowed.

Veeraswami, J.
13th December, 1960.

Sri Bava Oushadeswara Swami *v.*
Subbaiah Mudaliar.
S.A. No. 221 of 1959.

Practice—Contracts—Enforcement—Court—If has power to relieve parties from their obligation on grounds of equitable principles.

Courts can only look to the terms of the contract between the parties and enforce them subject to the law. There is no power in Courts to depart from the terms of a contract and relieve a party from his obligation under it on grounds of equitable principles.

T. M. Chinnayya Pillai, for Appellant.

K. S. Naidu and *K. S. Bhaktavatsalam*, for Respondent.

R.M.

Appeal allowed.

Ramachandra Iyer and Kunhammed-Kutti, JJ. State of Madras *v.* Thuthukudi etc., Sangam.
20th December, 1960. Appeal No. 370 of 1957.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), *section* 6 (16). —"*Specific endowment*"—*What is.*

In order to constitute a valid endowment it is necessary that the donor should divest himself of the property and in case of dedication to God or to a charity the dedication can be effectuated orally without any necessity for a written instrument. But a mere credit entry in the account books of the donor for a certain charity will not be sufficient to create an endowment unless the amount is set apart and appropriated towards the specific object.

(1945) 2 M.L.J. 164; (1952) 1 M.L.J. 282, followed.

The Government Pleader (*A. Alagiriswamy*) and *R. Desikan,* for Appellant.

S. V. Rama Iyengar, for Respondent.

R.M. *Appeal allowed in part.*

Rajagopalan and Srinivasan, J. Perianna Pillai *v.* Commissioner of I.T., Madras.
3rd January, 1961. R.C. No. 132 of 1956.

Income-tax Act (XI of 1922), *section* 13, *Proviso—Rejection of assessee's books of account—Conditions necessary for.*

What the Proviso to section 13 of the Income-tax Act requires is that the system of accounting adopted by the assessee should be defective, before the department could reject the books of account of an assessee. On the only ground that the gross profits as disclosed by the accounts of an assessee is low, in comparison with others in similar trade, the system of accounting adopted by an assessee cannot be rejected.

K. Srinivasan and *D. S. Meenakshisundaram,* for Appellant.

C. S. Rama Rao Sahib and *S. Ranganathan,* for Respondent.

R.M. *Reference answered in favour of assessee.*

Veeraswami, J. Kailasa Reddiar *v.* Ponnammal.
4th January, 1961. S.A. Nos. 1050 and 1951 of 1957.

Civil Procedure Code (V of 1908), *section* 47—*Party to suit struck off under Order* 10, *rule* 2—*When could be deemed to be a party defendant for purposes of section* 47.

Whether a person who has been exonerated from a suit and has been struck off as improperly impleaded, under the provisions of Order 10, rule 2 of the Code, could nevertheless be deemed to be a party defendant for purposes of section 47 of the Code is one of substance and not of form. An order exonerating a party from a suit may be made on several grounds and whether or not such a person could still be deemed to be a party for certain other purposes will depend on the circumstances of each case having regard to the pleadings and the scope of the order of exoneration.

A. Sundaram Iyer, for Appellant.

T. P. Gopalakrishnan, for Respondent.

R.M. *Appeal dismissed.*

Kailasam, J. Ganesa Mudaliar *v.* Chellammal.
2nd February, 1961. C.R.P. No. 1525 of 1959.

Madras City Tenants' Protection Act (III of 1922)—*Applicability—Benefits of the Act—New tenancy—When could be inferred.*

The Madras City Tenants' Protection Act confers the benefit under it on tenants holding over at the commencement of the Act. Where a tenant continues on the land on the same conditions as before, the mere fact that a fresh lease-deed was executed by him does not disentitle him from claiming the benefits of the Act. If there are any variations in the terms of the tenancy it will be a new tenancy and the tenant will not be entitled to the benefits of the Act. The burden is on the landlord to prove that there has been a variation of the terms of the tenancy.

I.L.R. (1940) Mad. 172; (1945) 2 M.L.J. 190; (1948) 1 M.L.J. 274, referred.

S. V. Kumaraswami, for Petitioner.

B. Kalyanasundaram, for Respondent.

R.M. *Petition allowed.*

Srinivasan, J.
2nd December, 1960.

Swami Nelliappar, etc., Devasthanam *v.* Sri Navaneethaswami, etc., Temple.
S.A. No. 415 of 1959.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 62—*Scope of—Effect of appointment of Receiver.*

Section 62 of the Madras Hindu Religious and Charitable Endowments Act, 1951, places a restraint upon the powers of a Civil Court and prohibits any stay of the order of the Commissioner framing a scheme till the disposal of the suit. The expression "shall have no power to stay the Commissioner's order" is compendious and the object of the prohibition is to postpone whatever relief the Court is called upon to grant to the stage of final determination of the suit. Hence, when a Court appoints a Receiver in such a suit, it cannot have the effect of staying the operation of the order of the Commissioner and the competency of the Executive Officer remains unaffected and he could take such steps in relation to the administration of the temple under the scheme in so far as they did not interfere with the Receiver appointed by the Court.

B. V. Viswanatha Iyer and *R. G. Rajan*, for Appellant.

M. Natesan and *N. Ramachandran*, for Respondent.

R.M. — *Appeal allowed.*

Kunhammed Kutty, J.
15th December, 1960.

Abdul Muthaliff *v.* Saidoon Bibi.
C.R.P. No. 2138 of 1959.

Madras Cultivating Tenants' (*Payment of Fair Rent*) *Act* (*XXIV of* 1956), *section* 15 —*Exemption under—Land used during the period for raising betel vines—Test.*

The exemption of any land under section 15 of the Madras Cultivating Tenants' (Payment of Fair Rent) Act, 1956, from the operation of the Act would come into play only if the land is used for raising the crops mentioned therein during the period when such land is used for raising as main crop betel vines, etc. The expression "during the period" could have reference only to the period when such crops are actually raised and not to the initial period of the lease. There is nothing under the Act precluding a tenant from using his holding for cultivation of any kind of crop provided it is agricultural or horticultural. Where it is established that only paddy is being cultivated in a land, the mere fact that at an earlier period the land was used for cultivation of betel vines will not take the land out of the provisions of the Act.

S. Mohan and *C. D. Sekkizhar*, for Petitioner.

P. S. Balakrishna Ayyar and *P S Ramachandran*, for Respondent.

R.M. — *Petition allowed.*

Anantanarayanan, J.
2nd February, 1961.

Elumalai *v.* Executive Officer, Avadi Panchayat.
Crl.R.C. No. 1453 of 1959.

Madras Village Panchayats Act (*X of* 1960), *sections* 92 (b) *and* 103, *Proviso—Effect—Period of limitation for prosecution—How computed.*

The Proviso of section 103 of the Madras Village Panchayats Act specifically provides that an offence of installing a machinery in contravention of section 92 (*b*) of the Act is deemed to be a continuing offence. This statutory fiction is intended to enable the local authority to have sufficient time to detect the offences under the Act. Hence even though the offence of installation of a machinery may become complete on the installation by a particular date, the offence is deemed to be a continuous one and a prosecution launched within a year of such installation will be within time.

C. K. Venkatanarasimham, for Petitioner.

The Public Prosecutor for State.

R.M. — *Penalty reduced.*

M—N R C

Kailasam, J.
2nd February, 1961.

Karuppannan *v.* Sadayan.
C.R.P. No. 2067 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 3 (3) (*a*) (*ii*)—*Deposit under—If could be dispensed with.*

Under section 3 (3) (*a*) (ii) of the Madras Cultivating Tenants' Protection Act, 1955, the rent due by a tenant must be deposited within a month after the date on which it accrued, before an application under section 3 (3) (*a*) of the Act could be entertained. Even if the tenant pleads that he has sent the rent by Money Order earlier and it was refused by the landlord his duty to deposit under sub-clause (ii) remains and no discretion is given to the Revenue Court to entertain an application without the deposit being made.

V. Vedantachari, T. Rengaswami Ayyangar, and *A. Venkatesam,* for Petitioner.

V. C. Veeraragavan, for Respondent.

R.M. — *Petition allowed.*

Ramakrishnan, J.
6th February, 1961.

Rajagopal Naidu *v.* Baby *alias* Kandaswami.
Crl.Rev. Case No. 1444 of 1959.
(Crl. Rev. Pet. No. 1350 of 1959)

Madras Village Panchayats Act (X of 1950), *section* 106—*Sanction under—When necessary.*

In order to attract the necessity of a prior sanction under section 106 of the Madras Village Panchayat Act, analogous to the general provision in section 197 of the Criminal Procedure Code, there must be a reasonable connection between the act complained of against the Government servant and the discharge of his official duty. Where an Executive Officer of a Panchayat while attending a meeting of the Panchayat, though in his capacity as such, uses obscene language, beyond the recognised limits of discussion of matters relating to his official duties, or loses temper and assaults some one it cannot be said that he was acting in the legitimate discharge of his official duties. In such cases no prior sanction is necessary before prosecuting the offender.

Messrs. John and Row and *S. Nainar Sundaram,* for Petitioners.

Public Prosecutor, for State.

K. Narayanaswamy Mudaliar, for Respondent.

R.M. — *Petition dismissed.*

Srinivasan, J.
24th February, 1961.

Mohanambal *v.* Selvanayaki.
C.R.P. No. 35 of 1960.

Madras City Tenants' Protection Act (III of 1922), *section* 4 (2)—*Order under determining the compensation—When could be made.*

The stage at which the Court is called upon to determine under section 4 (2) of the Madras City Tenants' Protection Act, the amount of compensation payable for the superstructure, is the date on which the Court comes to the conclusion that the landlord is entitled to vacant possession. The Act does not contemplate an order determining compensation and directing its payment at any point of time anterior to the final determination of the ejectment application itself. Any such order made during the pendency of the ejectment application, independent of it, will not amount to an interim order within the meaning of section 4 (2) of the Act.

N. Gopalakrishnan and G. Varadappa, for Petitioner.

K. Srinivasan and *K. Shanmugam,* for Respondent.

R.M. — *Petition allowed.*

[SUPREME COURT.]
J. L. Kapur and J. C. Shah, JJ.
6th February, 1961.

Jethanand and Sons *v.* The State of Uttar Pradesh.
C.As. Nos. 421 to 423 of 1957.

Civil Procedure Code (*V of* 1908) *as amended by Act* (*LXVI of* 1955), *section* 109 (1)(c) —*Scope—Certificate of fitness under Article* 133 (1) (*c*) *of the Constitution of India* (1950) *by the High Court—When can be granted—Question of law—Test.*

The High Court assumed that a certificate of fitness to appeal to Supreme Court may be issued under section 109 (1) (*c*) of the Code of Civil Procedure even if the order is not final, and in support of that view, they relied upon the judgment of the Judicial Committee of the Privy Council in (1933) L. R. 60 I.A. 76 : 64 M.L.J. 307, But section 109 of the Code is now made expressly subject to Chapter IV, Part V of the Constitution and Article 133 (1) (*c*) which occurs in that chapter authorises the grant of a certificate by the High Court only if the order is a final order. The inconsistency between section 109, Civil Procedure Code and Article 133 of the Constitution has now been removed by the Code of Civil Procedure (Amendment) Act, LXVI of 1955. But even before the amending Act, the power under section 109 (1) (*c*) being expressly made subject to the Constitution, an appeal lay to the Supreme Court only against judgments, decrees and final orders.

The High Court was of the view that the interpretation of para. 3 of the First Schedule of the Indian Arbitration Act raised a substantial question of law. But by the direction of the High Court, this question was also left open to be tried before the Civil Judge. We fail to appreciate how an observation on a question which is directed to be retried can still be regarded as raising a question of law of great public or private importance justifying grant of a certificate under Article 133 (1) (*c*) of the Constitution.

We accordingly vacate the certificate granted by the High Court and dismiss these appeals with costs.

J. B. Dadachanji, Advocate of *M/s. Rajindar Narain and Co.,* for Appellants.

C. B. Agarwala, Senior Advocate, for Respondent.

G.R. *Appeals dismissed.*

[SUPREME COURT.]
J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
7th February, 1961.

Mahanth Ram Das *v.* Ganga Das.
C.A. No. 432 of 1957.

Court-fees—Grant of time for payment of deficit Court-fees—Practice—Sections 148, 149 *and* 151 *of the Civil Procedure Code* (*V of* 1908).

Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is in (1925) L.R. 51 I.A. 321 : 47 M.L.J. 441 : I.L.R. 4 Pat. 61 (P.C.). No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council.

We accordingly, set aside the dismissal of the appeal and the suit, and grant the appellant two months time from today for payment of the deficit court-fee.

R. C. Prasad, Advocate, for Appellant.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
9th February, 1961.

Kaushalya Devi *v.*
Baijnath Sayal.
C.A. No. 216 of 1956.

Civil Procedure Code (V of 1908), Order 32, rule 7—Compromise decree against a minor —Section 97 of the Civil Procedure Code—Scope—Appeal against final decree—Validity of preliminary decree—If can be challenged.

It would be idle to contend that what is prohibited is a challenge to the factual correctness of the decree on the merits, because if the said decree is voidable as in the present case, the very point as to its voidable character is a part of the merits of the dispute between the parties. Whether or not Order 32, rule 7 (1), Civil Procedure Code, applies to the case would certainly be a matter of dispute in such a case and the object of section 97 is precisely to disallow any such dispute being raised if the preliminary decree is not challenged by appeal. The whole object which section 97 intends to achieve would be frustrated if it is held that only the factual correctness of the decree cannot be challenged but its legal validity can be even though an appeal against the preliminary decree has not been filed. Therefore, in our opinion, the High Court was right in coming to the conclusion that it was not open to the appellants to challenge the validity of the preliminary decree in the appeal which they had preferred against the final decree before the said High Court.

L. K. Jha, Senior Advocate, for Appellants.

Darya Datt Chawla, Advocate, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
10th February, 1961.

The Amalgamated Coal-fields Ltd. *v.*
The Najapadda Sabha, Chhindwara.
Petition No. 31 of 1959.

Government of India Acts, 1915 *and* 1933*—Constitution of India* (1950)*—C. P. and Berar Act* (*XXXVIII of* 1948)*—C.P. Local Self-Government Act,* 1920*—Coal tax.*

It is not suggested that " the coal tax " is one specified in any of the sections set out, and hence there was power to levy any other tax including that which is now impugned. The learned Attorney-General however suggested that the tax authorised by section 51, C. P. Act (IV of 1920) should still be somewhat like the taxes referred to in the other sections though not identical with them. Obviously, in the face of the words " other than those...." the rule of *ejusdem generis* is contra-indicated and if so on no rule of construction could " the coal tax " be excluded from the purview of the local authority. We, therefore, hold that the original imposition of the tax in 1935 was valid.

M. C. Setalvad, Attorney General of India, for Petitioners.

B. Sen, Senior Advocate, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, K. C. Das Gupta N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
10th February, 1961.

The Chief Inspector of Mines *v.*
Lala Karam Chand Thapar.
Cr.A.Nos. 98 to 106 of 1959.

Coal Mines Regulations, 1926*—Section* 27, 29, 73 *and* 74 *of the Mines Act,* 1952*—Constitution of India* (1950), *Article* 14*—If violated.*

We have, on all these considerations come to the conclusion that the words " any one of the directors " has been used in section 76 of the Coal Mines Regulations to mean "every one of the directors ", and that the contrary interpretation given by the High Court is not correct.

On the interpretation that " any one of the directors " means " every one of the directors " no question of violation of Article 14 of the Constitution arises.

We, therefore, allow the Appeals Nos. 98 and 99, set aside the orders of the High Court in Writ Petitions Nos. 475 and 476 of 1956 and order that these writ petitions be rejected.

Appeals Nos. 103 and 104 dismissed.

N. S. Bindra, Senior Advocate for Appellatn's in Cr. As. Nos. 98 and 101 of 1959.

G. S. Pathak, Senior Advocate for Appellants in Cr.As. Nos. 102 to 106 of 1959 and Respondents in Cr.As. Nos. 98 to 100 of 1959.

R. Ganapathy Iyer, Advocate, for Respondents in Cr. As. Nos. 102 to 106 of 1959 and Appellants in Cr.As. Nos. 99 and 100 of 1959.

G.R. — *Order accordingly.*

[SUPREME COURT]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
10th February, 1961.

Burrakur Coal Co. Ltd. and another *v.* The Union of India. Petitions Nos. 241 and 242 of 1960.

Coal Bearing Areas (Acquisition and Development Act, (XX of 1957)—Coal Mines (Conservation and Safety) Act, 1952—*Articles* 19 *and* 31 *of the Constitution of India—Adequate Compensation.*

Here compensation is specifically provided for the land which is to be acquired under the Act. The land includes all that lies beneath the surface or all that is " locked up " in the land. Parliament has laid down in sub-section (5) of section 13 how the value of this land is to be calculated. The contention that the provisions made by Parliament for computing the amount of compensation for the land do not take into account the value of the minerals is in effect a challenge to the adequacy of the compensation payable under the Act. The concluding words of Article 31 (2) preclude such a challenge being made.

P. R. Das and *K. Choudhury,* Senior Advocates, for Petitioners in both the Petitions.

M. C. Setalvad, Attorney-General for India and *B. Sen,* Senior Advocate, for Respondents in both the Petitions.

G.R. — *Petitions dismissed.*

[SUPREME COURT]

B.P. Sinha, C.J., S. K. Das, K. C. Das Gupta, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
10th February, 1961.

Banwarilal Agarwalla *v.* The State of Bihar. Cr.A. No. 131 of 1959.

Mines Act (XXXV of 1952)—*Coal Mines Regulations,* 1957—*Article* 14 *of the Constitution of India* (1950).

There is however no scope in the present case of applying the principle in support of the directory nature of section 59 (3) as laid down in (1958) S.C.J. 150: (1958) M.L.J. (Crl.) 85 : 1958 S.C.R 533. As we have pointed out above, the inconvenience that might be caused by holding regulations made in contravention of section 59 (3) invalid is removed by the provisions of section 60 ; and on the other hand to hold that regulations may be validly made without following the procedure laid down in section 59 even in cases not falling within section 60 is likely to be harmful to public interest, and to cause general inconvenience. It is really a converse case of what the Privy Council had to consider in L.R. (1917) A.C. 170 and this

Court considered in (1958) S.C.R. 533 : 1958 S.C.J. 150 : (1958) M.L.J. (Crl.) 85.

G. S. Pathak, Senior Advocate, for Appellant.

R. Ganpathy Iyer, Advocate, for Respondents.

G.R. ——— *Case remanded.*

[SUPREME COURT].

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
14th February, 1961.

C. Mohammad Yumus *v.* Syed Unnissa.
C.A. No. 512 of 1957.

Shariat Act (XXVI of 1937)—Immemorial Custom—Intestate succession—Muslim Personal Law.

We are unable to agree with the view of the Lahore High Court in A.I.R. 1943 Lah. 219 that a right acquired before 1937 (the date on which the Shariat Act was brought into operation) to bring a suit for a declaration that the alienation by the widow of the last holder who had by custom succeeded to the limited estate left by her husband was not binding upon the reversioner, was not taken away by the enactment of the Muslim Personal Law (Shariat) Application Act, 1937. It may be observed that the Court proceeded merely upon the general presumption against retrospectivity and their attention, it appears, was not directed to the phraseology used by the Legislature to give section 2 a retrospective operation.

Azizuddin, Senior Advocate, for Appellant.

Shaukat Hussain, Advocate, for Respondents Nos. 1 and 2.

G.R. ——— *Appeal dismissed*

[SUPREME COURT].

K. Subba Rao and Raghubar Dayal, JJ.
15th February, 1961.

Teeka and others *v.* State of Uttar Pradesh.
Cr.A. Nos. 79 and 89 of 1959.

Criminal Procedure Code (V of 1898), section 537—Applicability.

Though section 149 of the Penal Code is mentioned in the charge, it is not expressly stated therein that the members of the assembly knew that an offence under section 307 of the Penal Code was likely to be committed in prosecution of the common object of that assembly. Under section 537 of the Code of Criminal Procedure Code, no sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the charge, unless such error, omission or irregularity has in fact occasioned a failure of justice. The question, therefore, is whether the aforesaid defect in the charge has in fact occasioned a failure of justice. The accused knew from the beginning the case they had to meet. The prosecution adduced evidence to prove that the accused armed themselves with lathies and entered the premises of the decree-holder to recover their cattle and gave lathi blows to the inmates of the house causing thereby serious injuries to them. Accused had ample opportunity to meet that case. Both the Courts below accepted the evidence and convicted the accused under section 307, read with section 149, Penal Code. The evidence leaves no room to doubt that the accused had knowledge that grievous hurt was likely to be caused to the inmates of the decree-holder's house in prosecution of their common object, namely, to recover their cattle. We are of the opinion that there is no failure of justice in this case and that no case has been made out for interference.

A. S. R. Chari, Senior Advocate, for Appellant.

G. C. Mathur, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K. Subba Rao and Raghubar Dayal, JJ.
16th February, 1961.

Maharudrappa Danappa Kesarappanavar *v.* The State of Mysore.
Cr. A. No. 154 of 1959.

Prevention of Corruption Act (IV of 1947)*—Section* 21, *Indian Penal Code—Bombay District Municipal Act,* 1901*—Public servant.*

Clause (10) of section 21 of the Indian Penal Code merely requires that the person should have the duty to expend property for certain purposes. It is not restricted to such cases only where there is no limitation on the exercise of that power of expending property. The Chairman under the Bombay District Municipal Act has the duty to order payment and to spend the money of the Municipality in certain circumstances. We therefore hold that the appellant was a 'public servant' when the alleged offence was committed.

S. N. Andley, Advocate, for Appellant.

R. Gopalakrishnan, Advocate, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
16th February, 1961.

The Prakash Cotton Mills Private Ltd. *v.* The State of Bombay (Now Maharashtra).
C.A. No. 759 of 1957.

Bombay Industrial Relations Act (XI of 1947), *section* 114 (2)*—Constitutionality—Article* 19 *of the Constitution of India.*

(By Majority).—The agreement in the present case directed to be enforced by the impugned notification is similar in terms and as held in C.A. Nos. 351-356 and 358-369 of 1960, decided on December 7, 1960, it could not be enforced by industrial adjudication against the will of any of the parties. The power of the State Government under section 114 (2) of Bombay Industrial Relations Act being co-terminus with the power of an adjudicator under the Act, such an agreement cannot therefore be directed to be enforced against the will of the appellant even under section 114 (2) in as much as by doing so the State Government would be going beyond the powers conferred on it by that section. The impugned notification therefore must be held to be bad inasmuch as it goes beyond the powers conferred on the State Government under section 114 (2) and must therefore be struck down. We therefore allow the appeal with costs and setting aside the order of the High Court holding that the notification dated July 31, 1956, is beyond the powers of the State Government under section 114 (2) direct that it will not be enforced.

J. C. Bhatt, Advocate, for Appellants.

R. Ganapathy Iyer, Advocate, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
16th February, 1961.

The Government of U. P. *v.* Raja Mohammad Amir Ahmad Khan.
C.A. No. 319 of 1957.

Stamp Act (II of 1889), *sections* 31, 32 *and* 33*—Scope.*

The scheme of the Stamp Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under section 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under section 32 the Collector

will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed documents is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes *functus officio* and the provisions of section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.

I.L.R. 59 Cal. 1171; A.I.R. 1930 Bom. 392; I.L.R. 48 Nag. 950 and A.I.R. 1937 Mad. 763, considered.

C. B. Agarwala, Senior Advocate, for Appellants.

V. D. Misra, Advocate, for Respondent.

G.R. — *Appeal dismissed.*

Venkatadri, J.
5th January, 1961.

Mohd. Habib Sait Sons *v.* Abdul Rahim & Bros.
C.R.P. No. 807 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (3) (*c*)—*Relative hardship—Onus—Factors to decide.*

The burden of proving under section 7 (3) (*c*), *Proviso*, of the Madras Buildings (Lease and Rent Control) Act, 1949, that the hardship caused to him by an order of eviction being made against him will be greater than by refusing it is certainly on the tenant. The expression used is ' hardship ' and not ' inconvenience ' and in deciding the question a Court could consider all the relevant circumstances including the personal hardship to the tenant and the financial grounds of the business and the Court can take into consideration the present and future hardship and the prospects of alternative accommodation. It is mainly for the trial Judge under the Act to arrive at a conclusion as to the relative hardship, which is a question of fact. So long as the finding is based on some evidence an appellate Court will not lightly set aside the finding of a trial Court on the question of hardship. But where there is no evidence of hardship or where the trial Court takes into consideration factors which do not amount to hardship the appellate authority will be justified in interfering with the discretion of the Controller.

C. N. S. Chengalvarayan, for Petitioner.

M. A. Ghatala, for Respondent.

R.M. — *Petition allowed.*

Rajamannar, C.J. and Venkatadri, J.
9th January, 1961.

Mohd. Hussain *v.* Ganga Naicker.
L.P.A. No. 7 of 1958.

Practice—Decree for possession of immoveable property and for mesne profits—Partly preliminary and partly final—Mesne profits ascertained at a later date—Execution of decree as to possession—Limitation for—How calculated.

Limitation Act (IX of 1908), *Article* 182—*Date of decree—Decree for possession and mesne profits—Partly final and partly preliminary—Date from which limitation will run.*

A suit for possession of immoveable property and mesne profits is a suit comprising of two claims and where a decree is made for possession it is final as to that part though the part relating to mesne profits may be preliminary pending final determination of the quantum. Although one decree is made it is partly preliminary and partly final and the final part can be executed. Time for such execution for such a decree for possession will run from the date of the decree under Article 182 (3) of the Limitation Act.

T. M. Krishnaswami Ayyar, P. Sharafuddin, V. Venkatesan and *C. F. Louis*, for Appellant.

M. Ranganatha Sastri, for Respondent.

R.M. — *Appeal dismissed.*

Kunhamed Kutty, J.
12th January, 1961.

Arasiramani Panchayat *v.* Sellappa Gounder.
C.R.P. Nos. 2206 to 2208 of 1959.

Madras Village Panchayats Act (*X of* 1950), *section* 111 (1)—*Jurisdiction of civil Court to question assessment—When could be invoked.*

In order to get over the bar under section 111 (1) of the Madras Village Panchayats Act, 1950 and invoke the jurisdiction of the civil Court to question the validity of an order of assessment it should be shown that in levying the assessmenr in question the provisions of the Act and rules have not in substance or effect been complied with.

V. P. Raman, for Petitioner.

K. S. Mahalingam (amicus curiae) for Respondents.

R.M. — *Petition allowed.*

Veeraswami, J
19th January, 1961.

Gopal Chettiar *v.* Arumugha Naicker.
S.A. No. 358 of 1959.

Madras Agriculturists' Relief Act (*IV of* 1938), *sections* 3 (iii) (a), 9-*A and* 13—*Rent payable under a lease on lease back from usufructuary mortgage—If interest liable to be scaled down under section* 13.

'Interest' as defined in section 3 (iii) (*a*) of the Madras Agriculturists' Relief Act, is a part of the obligation under the debt. In order to constitute any excess payment over the principal amount, as interest, there should be a nexus between the liability to make such excess payment and the liability to pay the principal. Payments in discharge of obligations arising under different transactions or contracts could not come within the scope of interest as defined. Section 9-A (*a*) (i) of the Act provides specially for cases of lease back in favour of the mortgagor by the usufructuary mortgagee where the rent due will be deemed to be interset on the mortgage. Payment of rent in such cases will not, except under the deeming provision in section 9-A, tantamount to interest and it cannot be scaled down under section 13 of the Act.

K. Parasaran, for Appellant.

T. R. Ramachandra Ayyar, for Respondent.

R.M. — *Appeal allowed.*

Veeraswami, J.
16th February, 1961.

Govindaswami Naidu *v.* Arumugham Pillai.
S.A. No. 401 of 1959.

Madras Estates Land (*Reduction of Rent*) (*Amendment*) *Act* (*XXIX of* 1956), *section* 3-*A*—*Jurisdiction of the Collector under—Jurisdiction of civil Courts to decide the question incidentally in a suit—If barred.*

Section 3-A of the Madras Estates Land (Reduction of Rent) (Amendment) Act, 1956, creates a special jurisdiction in the Collector to decide whether a land in a village is or is not ryoti land. It does not take away the jurisdiction of civil Courts to decide the question as to the character of any land in a suit, incidentally for the purposes of granting a relief within its purview. The fact that a special jurisdiction is vested in the Collector to decide a particular fact cannot by implication take away the jurisdiction of the civil Court to decide a similar question incidentally to grant a relief which it otherwisw has.

V. T. Rangaswami Ayyangar and *T. E. Raghavachari,* for Appellant.

R. Gopalaswami Ayyangar, R. Balasubramanyam, M. Ramachandran and *T. V. Balakrishnan,* for Respondents.

R.M. — *Appeal allowed—Leave granted*

Rajamannar, C.J.
22nd February, 1961.

Kamalasani *v.* Krishnaswami.
C.R.P. No. 348 of 1960.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 90—*Procedure under, to direct security.*

Under the First *Proviso* to Order 21, rule 90 of the Civil Procedure Code, the Court has got a discretion at two stages, *viz.*, at the stage of admitting an application and at a later stage when the Court decides that security for or deposit of the amount of the sale warrant or the sale proceeds, should be ordered. In making an order under the *Proviso* the Court should consider having regard to the facts and circumstances whether to order security or deposit of amount. An order merely directing that cash security is to be furnished is not directing security as per the *Proviso* and is not a proper order.

A. Srirangachari and *Miss. Kamala Seshadri*, for Petitioner.

M. R. Narayanaswami, for Respondent.

R.M. *Petition allowed.*

Jagadisan and Kailasam, JJ.
3*rd March,* 1961.

Swaminathan *v.*
Sundara Vandayar.
A. No. 3 of 1956 and
C.R.P. No. 55 of 1960.

Madras City Tenants' Protection (Amendment) Act (XIII of 1960), *sections* 2 (1) (*ii*) *and* (*iii*) *and* 9—*Validity*—*If unconstitutional.*

Section 2 (i), (ii) and (iii) of the Madras City Tenants Protection (Amendment) Act, 1960, classifying buildings into residential and non-residential for purposes of protection is valid and is not discriminatory or unconstitutional. Section 9 of the Act giving retrospective operation to the amendment is not opposed to Article 19 (1) (*f*) or 31 of the Constitution of India.

V. P. Raman, for Appellant.

R. Gopalaswami Ayyangar and *K. N. Balasubramanism*, for Respondent.

The Advocate-General (*V. K. Thiruvenkatachari*) and The Government Pleader (*A. Alagiriswamy*), for the State.

R M *Appeal allowed.*

Ramakrishnan, J.
6*th March,* 1961.

Kali Thevan *v.* Giriraja Kaling Rayar.
Crl. R.C. No. 122 of 1960.
(Crl.R.P. No. 122 of 1960).

Criminal Procedure Code (V of 1898), *section* 145—*Evidence adduced by means of affidavit*—*Duty of Court to consider.*

While it may not be proper to lay down any general rule for guidance in regard to the consideration of affidavits filed in evidence in proceedings under section 145 of the Criminal Procedure Code it is clear that where the order of the Magistrate has not discussed the effect of the affidavits, especially of persons of the locality acquainted with the state of affairs such as the village head man and the karnam, the order will be improper and should be set aside in revision.

V. Rajagopalachari and *M. S. Sethu*, for Petitioner.

The Public Prosecutor, for the State.

S. Mohankumaramangalam, *S. Palaniswamy* and *P. S. Madusudanan*, for Respondents.

R.M. *Petition allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
6th February, 1961.

Hazrat Syed Shah Mastarshid Ali Al Quadari *v.* The Commissioner of Wakfs, West Bengal.
C.A. No. 237 of 1956.

Bengal Wakfs Act (XIII of 1934), *section* 40—*Appointment of a temporary Mutawalli.*

Where powers and duties are inter-connected and it is not possible to separate one from the other in such wise that powers may be delegated while duties are retained and *vice-versa*, the delegation of powers takes with it the duties. The proposition hardly needs authority ; but if one were necessary, reference may be made to *Mungoni* v. *Attorney-General of Northern Rhodesia*, L.R. (1960) A.C. 336.

B. Sen, Senior Advocate, for Appellant.

B. C. Mitter, Advocate, for Respondent No. 1.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
9th February, 1961.

Mallesappa Bandeppa Desai *v.* Desai Mallappa *alias* Mallesappa.
C.A. No. 263 of 1956.

Hindu Law—Joint family—Blending or throwing into the common stock—Effect—Power of a Hindu Female—Surrender by a Hindu Widow—Sanskrit Text of Hindu Law.

Is this doctrine of blending based on any Sanskrit Text of Hindu Law ? According to the decision of the Privy Council in (1931-32) L.R. 59 I.A. 331 : 63 M.L.J. 196 the doctrine is based on the text of Yagnavalkya and the commentary of Mitakshara ; the text of Yagnavalkya reads thus : " In cases where the common stock undergoes an increase, an equal division is obtained " Chapter I, sections 4, 30. In his commentary on this text Vijnyaneshwara has observed as follows : "Among unseparated brothers, if the common stock be improved or augmented by any one of them through agriculture, commerce or similar means, an equal distribution nevertheless takes place ; and a double share is not allotted to the acquirer". Mitakshara, Chapter I, section 4, placitum 31. Sir Dinsha Mulla, who delivered the judgment of the Privy Council in the case of (1931-32) L.R. 59 I.A. 331 : 63 M.L.J. 196, has observed that the words of Yagnavalkya mean that " if a member of a joint family augments joint property, whatever may be the mode of augmentation, the property which goes to augment the joint family propery becomes part of the joint family property, and he is entitled on a partition to an equal share with the other members of the family, and not to a double share, as in some other cases dealt with in the preceding verses. This is the placitum on which the whole doctrine of merger of estates by the blending of income is founded " (page 349). It would thus be seen that according to this decision the doctrine of blending or throwing into the common stock is based on the text just quoted.

With very great respect, however, the text of Yagnavalkya and the comments made by Vijnyaneshwara on it do not appear to have any relation to the doctrine of blending as it has been judicially evolved.

Under Hindu Law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras or a Hindu widow succeeding to her husband's estate, to efface herself and accelerate the reversion by surrender ; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owner's title to the property held by her. This aspect of the matter has apparently not been argued before the Courts below and has not been considered by them. Thus, if the doctrine of blending cannot be invoked in regard to the property

held by Channamma, the appellants' claim in respect of the said property can and must be rejected on this preliminary ground alone.

M. C. Setalvad, Attorney-General for India, for Appellants.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent No. 1.

M. R. Krishna Pillai, Advocate, for Respondent No. 2.

G.R. ——— *Appeal partly allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
10th February, 1961.

Kashinathsa Yamosa Kabadi *v.* Narasingsa Bhaskarsa Kabadi.
C.A. Nos. 218-223 of 1959.

Arbitration Act (X of 1940), sections 12, 27, 32, 31—Section 7 of the Registration Act (XVI of 1908)—Panchas decision.

Under section 12, sub-section (2) of the Arbitration Act, where the authority of an arbitrator or arbitrators is revoked by leave of the Court, the Court may order that the arbitration agreement shall cease to have effect with respect to the difference referred. If the decisions of the Panchas had not been accepted by the parties with the revocation of the reference, all proceedings which they had adopted might have fallen through; but the parties did accept the decisons made from time to time and the cancellation of the reference had not the effect of vacating the divisions already made. We are unable to agree with the view of the trial Judge that the cancellation had the effect of nullifying all the interim divisions and that they must be deemed to have been impliedly set aside.

R. B. Kotwal, Advocate, for Appellant (In C.As. Nos. 218 and 219 of 1959), Respondent No. 1 (In C.As. Nos. 220 and 222 of 1959), Respondent No. 2 (In C.A. No. 221 of 1959) and Respondent No. 5 (In C.A. No. 223 of 1959).

Dr. W. S. Barlingay, Senior Advocate, for Appellants (In C.As. Nos. 220 and 221 of 1959), Respondents Nos. 124 (In C.As. Nos. 218 and 223 of 1959) and Respondents Nos. 3 to 6 (In C.As. Nos. 219 and 222 of 1959).

Naunit Lal, Advocate, for Appellants (In C.A. Nos. 222 and 223 of 1959, Respondent No. 6 (In C.A. No. 218 of 1959), Respondent No. 1 (In C.A. Nos. 219 and 221 of 1959) and Respondent No. 3 (in C.A. No. 220 of 1959).

R. Gopalakrishnan, Advocate for Respondents Nos. 5 (*a*) to 5 (*c*) (In C.A. No. 218 of 1959) Respondents Nos. 2 (*a*) to 2 (*c*) (In C.As. Nos. 219, 220 and 222 of 1959), Respondents Nos. 3 (*a*) to 3 (*c*) (In C.A. No. 221 of 1959) and Respondents Nos. 6 (*a*) to 5 (*c*) in C.A. No. 223 of 1959).

G.R. ——— *Appeals partly allowed.*

[SUPREME COURT.]

P. B. Gajandragadkar, and K. C. Das Gupta, JJ.
17th February, 1961.

M/s. China Cotton Exporters *v.* Beharilal Ramacharan Cotton Mills, Ltd.
C.A. No. 331 of 1956.

Contracts—Breach of contract—Conditions of fulfilment of the contract.

We are, therefore, of opinion that the Courts below were right in thinking that the shipment time was guaranteed, and time was of the essence of the contract. Quite clearly however the question whether delivery should be spread over the period arises only in case of instalment contracts. There is nothing however before us to show that the defendants' contract with its Italian suppliers was an instalment contract. In the absence of the contract or any other circumstances justifying a conclusion that it was instalment contract it is not possible to accept the contention of the learned Attorney-General that the defendants' Italian suppliers would be bound to spread the supply over the period October/November, 1950.

M. C. Setalvad, Attorney-General for India, for Appellants.

Purshottam Trikamdas, Senior Advocate, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao K. N. Wanchoo and K. C. Das Gupta, JJ.
20th February, 1961.

The Custodian of Evacuee Property, Bangalore *v.* Khan Sahab Abdul Shukoor.
C.A. Nos. 101-104 of 1957.

Mysore Administration of Evacuee Property (Emergency) Act (XLVII of 1949)—*Second (Eemergency) Act (LXXIV of* 1949)—*Powers of Custodian-General under Administration of Evacuee Properties Act (LXVI of* 1950).

We are, therefore, of opinion that considering the purpose for which the Act was passed and the successive saving clauses in the Second Mysore Act and in the Administration of Evacuee Property Act, 1950, the Custodian-General had the power under section 27 to call for the record of the proceeding in which the order of August 22, 1950, was passed and consider its legality or propriety and pass such order in relation thereto as he thought fit. Even if the notice of October, 1950, may be open to question as it was issued before Act LXVI of 1950 was passed, there can be no doubt that the order of February, 1952, under section 27 was passed after hearing the parties and would be valid and within the jurisdiction of the Custodian-General when it was passed. Therefore, the order of the Custodian-General, dated February 11, 1952, being within his jurisdiction would not be liable to be set aside on a writ of *certiorari* as if the Custodian-General had acted without jurisdiction.

H. N. Sanyal, Additional Solicitor-General of India, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent.

G.R. *Appeals allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, and K. C. Das Gupta, JJ.
20th February, 1961.

Sarda Prasad *v.* Lala Jamna Prasad.
C.A. No. 276 of 1956.

Hindu Law—Joint family—Powers of a Karta *of a Hindu joint family to take possession under a decree for partition on behalf of minors.*

In L.R. 40 I.A. 132 : 25 M.L.J. 150, their Lordships of the Privy Council held that in view of the provisions of section 462 of the then Code of Civil Procedure (which corresponds to Order 32, rule 7 of the present Civil Procedure Code) the managing member who had been appointed a guardian in the suit had no authority to enter into any compromise or agreement purporting to bind the minor. This principle has been applied also to cases where the provisions of Order 32, rule 6, would apply and so it has been held in numerous cases in India that the *Karta* of a Hindu joint family though guar-dian in the suit cannot give a valid discharge in respect of a claim for a decree for " money or other movable property ".

In the pressent case however there is no scope for the application of either the provisions of Order 32, rule 6 or Order 32, rule 7 of the Code of Civil Procedure. Neither is this a case of a receipt of any money or moveable properties ; nor is there any question of entering into an agreement or compromise on behalf of the minor. For, clearly acceptance of delivery of possession of property in terms of the decree in a partition suit can by no stretch of imagination be considered as entering into any " agreement or compromise."

S. P. Sinha, Senior Advocate, for Appellants.

G. C. Mathur, Advocate, for Respondent No. 1.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
21st February, 1961.

The Commissioner of Income-Tax, Bombay City *v.* M/s. Filmistan Ltd.
C.A. No. 451 of 1960.

Income-tax Act (XI of 1922), *section* 30—*Right of appeal under.*

The question referred to the High Court was " whether the appeal filed before the Appellate Assistant Commissioner on 20th April, 1955, became a proper and complete appeal though barred by limitation and the Appellate Assistant Commissioner should have decided the question of the condonation of delay ?"

In our opinion the meaning of the words "no appeal shall lie" in the Proviso to section 30, Income-tax Act, is not that no memorandum of appeal can be presented. All that it means is that the appeal will not be held to be properly filed until the tax has been paid. The question will then have to be decided whether there was sufficient cause for condonation of delay and that is exactly what the Tribunal had ordered and that in our opinion is the effect of the Proviso to section 30 (1) read with sub-section (2) of section 30 of the Act.

K. N. Rajagopal Sastri, Senior Advocate, for Apppellant.

Bishan Narain, Senior Advocate, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
21st February, 1961.

Devidas *v.* Shrishailappa.
C.A. No. 112 of 1957.

Civil Procedure Code (V of 1908), *Order* 6, *rule* 17—*Addition of parties—Effect on limitation.*

If fresh parties are merely joined for the purpose of safeguarding the rights subsisting as between them and others claiming generally in the same interest, the determination of the date of the institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the original plaintiff to continue the suit and will not attract the application of the general provisions of the Limitation Act. Addtion to the suit of any member of the branch to which the plaintiffs belonged would only mean setting out the name of such a person *eo nomine.*

Purshottam Trikamdas, Senior Advocate, for Appellants.

C. K. Daphtary, Solicitor-General of India, for Respondents Nos. 1 and 3.

B. R. L. Iyengar, Advocate, for Respondents Nos. 6 to 9.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah, and J. C. Shah, JJ.
22nd February, 1961.

The Commissioner of Income-tax, Andhra Pradesh (Hyderabad) *v.* M/s. Bhikaji Dadabhai & Co.
C.A. No. 434 of 1960.

Income-tax Act (XI of 1922)—*Hyderabad Income-tax Act—Finance Act,* 1950.

The following questions were referred to the High Court of Judicature at Hyderabad.

(1) Whether on 31st October, 1951, the Income-tax Officer, Warrangal Circle, had the power to impose a penalty under section 40 (1) of the Hyderabad Income-tax Act in respect of the assessment for the year 1357 F. ?.

(2) Whether the assessee had a right to appeal against the order of the Income-tax Officer imposing the penalty ?

(3) If the Appellate Assistant Commissioner did not have jurisdiction to hear the appeal whether the order of the Appellate Assistant Commissioner is a nullity and therefore the order of the Income-tax Officer erroneous, though it may stand until it is set aside by a competent authority?

Held :—We are, however, unable to agree with the High Court that because of the repeal of the Hyderabad Income-tax Act by the Finance Act, 1950, the power to impose a penalty in respect of the years preceding the date of repeal was lost.

Manifestly, by section 13, the Hyderabad Income-tax Act, ceased to have effect as from April 1, 1950. But the operation of that Act in respect of levy, assessment and collection of income-tax and super tax in respect of periods prior thereto for which liability to income-tax could not be imposed under the Indian Income-tax Act, 1922, was saved.

We are of the view that the High Court erred in holding that the proceedings for imposing the penalty could not be continued after the enactment of section 13 (1) of the Finance Act, 1950.

K.N. Rajagopal Sastri, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondents.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P.B.Gajendragadkar, and
K. N. Wanchoo, JJ.
24th February, 1961.

E. V. Balakrishnan *v.*
Mahalakshmi Ammal.
C.A. No. 86 of 1957.

Succession Act (XXXIX of 1925), *section* 89—*Will—Artificial rule of construction evolved in England to avoid uncertainty—If to be applied in India.*

Where it is not possible to say on the construction of a will that the testator himself indicated the selection or appointed a third person to make the selection but still intended to make a gift which could be made certain by selection made by the legatee, the English rule of construction that in such cases the testator intended the legatee to select should be applied in India also and the decision in *Narayanasami Gramani's case* (I.L.R. 18 Mad. 460), is correct. The fact that there are ways of partition available to agriculturists in India would make no difference to the application of the rule, for we take it that there are ways of partition available to parties in England also. The application of this rule would avoid unnecessary litigation also, for once it is known that in such cases the selection is with the legatee the difficulty arising out of such wills could be easily resolved without recourse to Courts. For this reason also we think that this rule of benevolent construction of wills of this description should be applied to India also.

M.C. Setalvad, Attorney-General for India, for Appellant.

A.V. Viswanatha Sastri, Senior Advocate, for Respondents.

G.R. *Appeal dismissed.*

Anantanarayanan, J.
10th March, 1961.

Rajangam, *In re.*
S.C.M.P. No. 33 of 1961.

Criminal Procedure Code (V of 1898), *sections* 426 *and* 561-*A—Inherent powers of High Court to grant bail.*

Quaere :—Whether the High Court has any inherent power to grant bail under section 561-A of the Criminal Procedure Code apart from the specific provision of section 426 of the Code?

V. P. Raman and *P. N. George*, for Petitioner.

The Public Prosecutor, for the State.

R.M. *Petition dismissed.*

Veeraswami, J.
14th March, 1961.

Abdul Rahim *v.* State of Madras by Accommodation Dy. Tahsildar.
Crl.R.C. No. 527 of 1960.
(Crl.R.P. No. 511 of 1960).

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), sections 6 (2) (a) *and* 16 (1)—*Premium—What is—Payment of a lumpsum under a lease with stipulation as to its repayment on the tenant vacating—If in contravention.*

The word 'premium' in section 6 (2) (*a*) of the Madras Buildings (Lease and Rent Conyrol) Act, 1949, is used in contradistinction to the word rent, which is normally payable periodically. Where an amount is received under a lease, not as a price but as money refundable on the heppening of a stipulated event, it cannot be held to be a premium. What is contemplated as premium in the context is some payment in the nature of a price and which is not refundable. The expression 'or other like sum' in the clause should be understood *ejusdem generis* to the word 'premium' and only a payment which has some resemblance to what is comprehended by the word premium will come within the scope of the words 'or other like sum'. The *Proviso* regarding receipt of advance limited to two months cannot have the effect of converting the refundable deposit into a premium.

N. Sivamani, Syed Asim and *K. K. Mitra*, for Petitioners.

The Public Prosecutor, for the State.

R.M. —— *Petition allowed.*

Kailasam, J.
6th January, 1961.

State of Madras *v.* L. Ct. S.P. Subramaniam Chettiar.
C.R.P. No. 1559 of 1959.

Provincial Insolvency Act (V of 1920), *sections* 61 *and* 63—*Creditor not proving his debt before the declaration of dividend—When entitled to payment—Priority of debts due to Government—If affected.*

Under section 63 of the Provincial Insolvency Act a creditor who has not proved his debt in insolvency before the declaration of the dividend, will only be entitled to payment out of the monies in the hands of the Official Receiver without disturbing the prior distribution of any dividend declared. But where the dividend has only been declared but not actually distributed, such a creditor will be entitled to be included in the list of creditors and have a fresh dividend declared on that basis.

But this rule could not affect the right of the Government to priority under section 61 of the Act and merely because the Government comes with a claim after the declaration of dividend their right to claim priority is not affected so long as there is money available in the hands of the Official Receiver.

G. Ramanujam, for the Government Pleader (*A. Alagiriswami*), for Petitioner.

T. R. Sundaram, for Respondent.

R.M. —— *Petition allowed.*

Ramachandra Iyer and Kunhamed Kutty, JJ.
3rd March, 1961.

Viswanathan *v.* State of Madras.
Appeal No. 206 of 1958.

Madras Entertainments Tax Act (X of 1939), *section* 7 (1)—*Excess collection of tax from the purchasers of the tickets—Management of the cinema house—If could claim the excess.*

The management of a cinema house is made so to stay the agent of the State for collecting the entertainments tax under the Act and when once the tax is collected and paid to the Government the agency ceases. The agent could have no interest in the collections. If there is any excess payment the agent has no interest in it so long as what is paid is what is collected by way of tax. The amount collected as tax is not the income of the person collecting it and he cannot claim refund from the Government on the ground that what has been collected and paid as tax is in excess of what is properly due to the Government.

T. R. Srinivasa Ayyangar, for Appellant.

The Government Pleader (*A. Alagiriswami*) and *G. Ramanujam*, for Respondent.

R.M. —— *Appeal dismissed.*

[END OF VOLUME (1961) 1 M.L.J. (N.R.C.).]